

United States
Circuit Court of Appeals
For the Ninth Circuit.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALO,

Appellants,

vs.

H. GREENBERG,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the District of Alaska, Second Division.

Filed
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F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

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WM. A. GILMORE, Nome, Alaska,
Attorneys for Plaintiff.

G. J. LOMEN, Nome, Alaska,

O. D. COCHRAN, Nome, Alaska,
Attorneys for Defendants. [2*]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALO,

Defendants.

Complaint in Equity.

Comes now plaintiff and for cause of action against the defendants above named, alleges as follows:

I.

That heretofore and on the 19th day of March, 1910, and for a long time prior thereto, the defendants, Jack Lesamis, John Tyapay and Andy Garbin, were the owners and in the possession of certain placer mining claims situated in the Neatuk-Kobuk Mining and Recording District, District of Alaska, and that the legal titles to the said

*Page-number appearing at foot of page of original certified Transcript of Record.

placer mining claims stood in the names of the said defendants by virtue of certain placer locations by them theretofore made in said mining district; that on the said 19th day of March, 1910, the said defendants, Jack Lesamis, John Tyapay and Andy Garbin entered into certain written instruments whereby and wherein they agreed with the plaintiff to form a copartnership to work and mine the said mining claims and to give and convey to the plaintiff an undivided one-quarter ($\frac{1}{4}$) interest in all of the said placer [3] claims, lode claims and water rights then owned, acquired or to be acquired by the said defendants in consideration that the plaintiff furnish them with provisions from time to time from the said 19th day of March, 1910, up to and until July, 1910, and agreed to pay said defendants the sum of six thousand dollars (\$6,000.00) in cash and thereafter the further and additional sum of twenty-four thousand dollars (\$24,000.00) from the net profits of the mining operations to be thereafter conducted and had upon said mining claims; that the said agreement between the parties, plaintiff and said defendants, was reduced to writing and incorporated in the following two written instruments which said instruments were executed, witnessed and delivered between the parties, to wit:

AGREEMENT.

Klery Creek, March 19th, 1910.

Know all men by these presents That we the undersigned John Tyapay, Andy Garbin and Jack Lesamis of the Noatak-Kubuk recording district, District of Alaska, and H. Greenberg of Nome,

Ala. enter into this agreement, that for the sum of one dollar lawful money of the United States in hand paid and other valuable service, for same services, H. Greenberg is, and shall be a full-fledged partner with the above-mentioned parties and have one-quarter undivided interest in all claims, lodes, water-rights acquired or to be acquired and owned by the above-mentioned parties. It is further agreed that H. Greenberg is to furnish the above-mentioned parties with provisions from time to time up to till July 1910.

ANDY GARBIN. (Seal)

JACK LESAMIS. (Seal)

JOHN TYAPAY. (Seal)

H. GREENBERG.

Witnesseth:

SAM MAGIDS,

HERMAN BERNHARDT." [4]

This indenture made the 19th day of March in the year of our Lord one thousand nine hundred and ten between the undersigned Andy Garbin, Jack Lesamis and John Tyapay of the Noatak-Kobuk, Recording District, of the District of Alaska, parties of the first part and H. Greenberg of Nome, Alaska, party of the second part witness, That the said parties of the first part, for and in consideration of the sum of Thirty Thousand Dollars (\$30,000.00).

Six Thousand Dollars (\$6,000.00) in lawful money of the United States of America to them in hand paid by said party of the second part, The receipt whereof is hereby acknowledged, and the balance of Twenty-four thousand to be paid of the first money taken out of the ground hath, granted, bar-

gained, sold remised, released and forever quit-claimed, and by these presents doth grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, his heirs and assigns one-quarter ($\frac{1}{4}$) undivided of all mining claims located, surveyed, recorded and held by said parties of the first part situated in Noatak-Kobuk mining district, district of Alaska, together with all the dips, spurs and angles, and also the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges, and franchises thereto incident, appendent and appurtenant, or therewith uusually had or enjoyed; and also all and singular the tenements, hereditaments and appurtenances, thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well as in law as in equity, of the said party of the first part, of, in or to the said premises and every part or parcel thereof, [5] with appurtenances.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever warranting and defending the same against the claims of all persons, save and except the United States.

ANDY GARBIN. (Seal)

JACK LESAMIS. (Seal)

JOHN TYAPAY. (Seal)

Witnesseth:

SAM MAGIDS,

HERMAN BERNHARDT."

II.

That thereafter and at all times since said 19th day of March, 1910, plaintiff has fulfilled and carried out the terms, covenants and conditions on his part to be done, made, kept and performed, and did furnish the said defendants with the provisions mentioned in said written instrument and did pay to said defendants the said sum of six thousand dollars (\$6,000.00) in lawful money of the United States, and the said defendants thereupon and in pursuance of the terms of said written instrument, entered into the mining copartnership known, named and called the Klery Creek Mining Company, and thereupon began mining operations upon the said placer claims hereinafter named and set forth.

III.

That at the time said instruments were executed and delivered, the said defendants, Jack Lesamis, John Tyapay and [6] Andy Garbin, were the owners and in the possession of the following placer mining claims:

Discovery Claim, One Above Discovery, Two Above Discovery, Six Below Discovery, Fraction between two and Three Above Discovery, Association Fraction Between Discovery and Starr, California Association, L. L. Klery Creek, Opposite Discovery, Butte Association, R. L. Klery Creek, Opposite Discovery, Oregon Association (Bench and Creek) adjoining upper and Starr, and lower end 1 and 2 above Discovery, Bench Seven, opposite Creek Claim Seven Below, Gold Hill Association R. L. opposite 1, 2, 3 and 4 creek claims. All

the foregoing claims being situated on Klery Creek, in its benches. Also Honey Claims, one and two, between Klery and Bear Creeks, Northpole Association L. L. adjoining claims, last above described, One and Two Above Discovery, on Bear Creek, Goldfield Association opposite 1 and 2 above and 1 below L. L. Bear Creek, Rich Association on Bear Creek, and adjoining 2 above, Central Association, adjoining No. 1 below, on Central Creek, Discovery on Central Creek, One above on Central Creek, One Below on Central Creek, Fraction (Garbin) on Central Creek, Discovery Claim on Jack Creek, a tributary of Klery; all interest of said first party in all mining claims owned in whole or part in Rocky Creek, in said mining and recording district. And thereupon the said Klery Creek Mining Company entered into possession of said claims and began to mine and operate the same as a mining copartnership; that thereafter the said Klery Creek Mining Company operated the said placer mining claims in the said Klery Creek and vicinity in the Noatak-Kobuk Recording District, between said 19th day of March 1910, and the 10th day of August, 1911; that during said term [7] and time said mining claims were operated at a loss to the said mining copartnership at approximately the sum of eighteen thousand dollars (\$18,000.00); that said indebtedness is due to the firm of Robinson, Magids Co., or assignee, for goods, wares and merchandise and for money advanced at the request of said Klery Creek Mining Company.

IV.

That on or about the 10th day of August, 1911, the said Klery Creek Mining Company executed several written leases upon several of the said mining claims above mentioned belonging to the said Klery Creek Mining Company for the purpose of having said copartnership property mined during the present winter, under all of which said leases certain stipulated royalties were reserved to be paid to said mining copartnership.

V.

That heretofore and on or about the 13th day of August, 1911, the defendants, Andy Garbin and Jack Lesamis, in violation of the terms and conditions of the said copartnership instruments, entered into a conspiracy to defraud this plaintiff of his rights in the said Klery Creek Mining Company, and thereupon collusively and fraudulently and without any consideration, transferred and assigned all of their right, title and interest in the said Klery Creek Mining Company, copartnership property, consisting of said placer mining claims on Klery Creek and vicinity in said Noatak-Kobuk Recording District, to said defendants, George Stanley and Sam Salo, both of whom were and are insolvent. [8]

VI.

That the said written instruments executed and delivered as above alleged on the 9th day of March, 1910, were thereafter duly recorded in the office of the recorder of the said Noatak-Kobuk Recording District, District of Alaska, on the 29th day of March,

1910, and the said defendants, George Stanley and Sam Salo, took and received the said transfers of title from the said defendants, Jack Lesamis, and Andy Garbin, with full knowledge and notice of the said written instruments of the said copartnership and with full knowledge and notice of the fact that the said Klery Creek Mining Company had outstanding indebtedness at said time of approximately the sum of eighteen thousand dollars (\$18,000.00) incurred in mining operations, over and above all production of gold from said mining claims so conveyed.

VII.

That the said transfer from the said defendants Lesamis and Garbin to the said Stanley and Salo were made for the purpose and with the intent of changing and modifying the said original copartnership agreement, and immediately thereafter the said defendants, Stanley and Salo, threatened to and did claim and do now claim, that they by reason of the said assignment were and are now entitled to the sum of twenty-four thousand dollars (\$24,000.00) from the gross output of said mining claims, and now claim and assert that they are entitled to said sum of twenty-four thousand dollars (\$24,000.00) before the said indebtedness of eighteen thousand dollars (\$18,000.00) is paid or the expenses of operating the said mining claims is paid and defrayed. [9]

VIII.

That the said defendants, Stanley and Salo, are now claiming to be the lessors of the lessees who

are working the said mining claims and threaten to and will collect or attempt to collect the royalties and the entire output of the said placer mining claims belonging to the said Klery Creek Mining Company, under their alleged claim for payment of twenty-four thousand dollars (\$24,000.00) alleged to be due them in disregard of the present indebtedness of said Klery Creek Mining Company, and contrary to the intent of the formation of said Klery Creek Mining Company, as above alleged.

IX.

That heretofore and on the 24th day of October, 1911, one Philip Murphy, claiming an assignment of the account of said Robinson, Magids & Co., creditor of said Klery Creek Mining Company, began an action at law in the above-entitled court for the collection of the sum of seventeen thousand one hundred twenty-four dollars (\$17,124.00) and interest against the said Klery Creek Mining Company, consisting of the defendants, Jack Lesamis, John Tyapay and Andy Garbin, and this plaintiff, and caused to be issued a writ of attachment against the mining property of said Klery Creek Mining Company; that said amount is justly due the said Robinson, Magids & Co., or their assignee the said Philip Murphy, and should be paid from the first gold or gold-dust taken, or extracted, mined or received from the said placer mining claims, before the said sum of twenty-four thousand dollars (\$24,000.00) or any other amount is payable to the said defendants, Jack Lesamis or Andy Garbin. [10]

X.

That owing to the acts and actions of the said defendants, Jack Lesamis and Andy Garbin, as above alleged, it is impossible for the plaintiff and said defendants to further act and conduct the mining copartnership in the management and working of said mining copartnership property and mining claims, that said defendants, George Stannley, Sam Salo, Andy Garbin, Jack Lesamis and John Tyapay, are all insolvent and have no other property of value other than their alleged interest in the said copartnership mining property, and unless the Court appoint a receiver of this court to take possession of the said mining copartnership property and mining claims and collect the royalties, rents and profits thereof, the same will be wholly dissipated by the said defendants, and the plaintiff will be compelled by law to pay the indebtedness of said mining copartnership from his personal assets; that the said defendants, Jack Lesamis, Andy Garbin and Jack Tyapay, refused to account to the plaintiff and have refused and still refuse to enter into an accounting between the plaintiff and the said defendants, with reference to the expenses and output of the said copartnership under the terms and conditions of said copartnership agreement, and said defendants, Stanley and Salo, threaten to assume the management and control of the copartnership assets of said Klery Creek Mining Company and threaten to appropriate the rents, royalties and profits to their own use and benefit, and

threaten to and do ignore the debts and liabilities of said Klery Creek Mining Company, to the damage and injury of the plaintiff. [11]

WHEREFORE, plaintiff prays the Court as follows:

1. For a restraining order against the defendants and each of them enjoining and restraining them and each of them *pendente lite* from in any manner transferring, assigning, encumbering or conveying in any manner or way, whatsoever, any interest in the said mining claims above alleged, the property of the said Klery Creek Mining Company.

2. That the Court appoint a receiver of this court to take possession of said mining claims and hold the possession subject, however, to the leases heretofore given for the purpose of accepting and receiving subject to the orders of the Court, all rents, royalties and profits from the operation of the mining claims of the said Klery Creek Mining Company.

3. That the Court make an accounting between the plaintiff and defendants of all and every matter arising under and by virtue of the said mining copartnership, and that the Court order and direct the said receiver to pay and defray from the rents, royalties and profits collected by him, any and all indebtedness now existing against the said Klery Creek Mining Company, including the amount due to the said Robinson, Magids & Co., or their said assignee, Philip Murphy.

4. That the Court enter a final decree dissolving the said copartnership and directing a sale of all of

said property, both real and personal, and directing a distribution of the proceeds among the members of the said copartnership if any proceeds exist after the satisfaction of all indebtedness found to be due.

[12]

5. That the plaintiff be decreed and adjudged entitled to his costs and disbursements in this action against the said defendants.

6. And that the plaintiff be entitled to such other and further relief as to the Court seems meet and proper.

J. F. HOBBS and
WILLIAM A. GILMORE,
Attorneys for Plaintiff.

United States of America,
District of Alaska,—ss.

H. Greenberg, being first duly sworn, deposes and says:

That he is the plaintiff in the above and foregoing action; that he has heard read the above and foregoing complaint, knows the contents thereof and the same is true as he verily believes.

H. GREENBERG.

Subscribed and sworn to before me this 30th day of October, A. D. 1911.

[Notarial Seal] WILLIAM A. GILMORE.

Notary Public in and for the District of Alaska.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Complaint. Filed in the Office of the Clerk of the

District Court of Alaska, Second Division, at Nome.
Nov. 1, 1911. John Sundback, Clerk. By ———, Deputy. L. J. H. Hobbes and William A. Gilmore, Attorneys at Law, Nome, Alaska. Attorneys for Plaintiff. [13]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GAR-
BIN, GEORGE STANLEY and SAM SALO,
Defendants.

Summons.

The President of the United States of America, to
Jack Lesamis, John Tyapay, Andy Garbin,
George Stanley and Sam Salo, defendants,
GREETING:

You are hereby summoned and required to appear and answer the complaint of the plaintiff on file in the office of the above-entitled court, at the City of Nome, Alaska, within thirty (30) days from the service of this summons upon you, or judgment for want thereof will be taken against you;

And you are hereby notified that if you fail to answer the said complaint the plaintiff will apply to the Court for the relief demanded in said complaint.

WITNESS the Honorable CORNELIUS D. MURANE, Judge of said court, and the seal of said

court hereto affixed this 1st day of November, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States, one hundred and thirty-sixth.

[Seal]

J. SUNDBACK,

Clerk of the District Court, District of Alaska, Second Division.

By J. Allison Bruner,

Deputy. [14]

United States of America,
District of Alaska,
Second Division,—ss.

I hereby certify that I received the annexed summons on the 18th day of November, 1911, and thereafter on the 20th day of November, 1911, I served the same at Kiana, Alaska, upon Jack Lesamis, Andy Garbin, George Stanley and Sam Salo, by delivering to and leaving with each of them a copy thereof, together with a certified copy of the complaint filed therein. After due and diligent search I was unable to find John Tyapay.

Returned this 24th day of November, 1911.

T. C. POWELL,

United States Marshal.

By C. H. Hawkins,

Deputy.

Marshal's costs: 4 services, \$24.00.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff vs. Jack Lesamis et al., Defendants. Summons. Filed in the office of the Clerk of the

District Court of Alaska, Second Division, at Nome.
Dec. 13, 1911. John Sundback, Clerk. By J. Allison Bruner, Deputy. J. H. Hobbes and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. 3348 [15]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN,
GEORGE STANLEY and SAM SALLO.

Defendants.

Separate Answer of George Stanley and Sam Sallo.

Come now the defendants George Stanley and Sam Sallo, and for their separate answer to the complaint of the plaintiff, H. Greenberg, herein, admit, deny and alleges as follows:

I.

These answering defendants deny each and every allegation, matter and thing in said complaint alleged, except as hereinafter admitted, qualified or otherwise alleged.

II.

These answering defendants admit that on the 19th day of March, 1910, their codefendants herein, Jack Lesamis, John Tyapay and Andy Garbin,

were the owners of the premises mentioned and described in the said complaint, and that on the day last aforesaid, their said codefendants entered into the agreement and made the conveyance in words and figures set forth in said complaint and upon the considerations expressed in said instruments.

III.

That on or about the 2d day of Sept. 1911, the [16] defendant, Andy Garbin for a valuable consideration, granted, bargained, sold and conveyed and assigned to the defendant, George Stanley, all his right, title and interest in and to the said premises described in said complaint and in and to all gold dust extracted therefrom, and in and to all claims and demands against the plaintiff Greenberg, arising from the operation and mining of said premises, and in and to all deferred payments due from said Greenberg on account of his purchase of the undivided one-fourth of said premises under the conveyance mentioned in the complaint, and in and to all sums or royalties due or to become due under leases executed by said Garbin and covenants of said premises.

IV.

That on the day last aforesaid, the defendant Jack Lesamis, for a valuable consideration, granted, bargained, sold and conveyed and assigned to the defendant, Sam Sallo, all his right, title and interest in and to the said premises described in said complaint, and in and to all gold-dust extracted therefrom, and in and to all claims and demands against the plaintiff Greenberg, arising from the operation

and mining of said premises, and in to all deferred payments due from said Greenberg on account of his purchase of the undivided one-fourth of said premises under the conveyance mentioned in the complaint, and in and to all sums or royalties due or to become due under leases executed by said Lesamis and cotenants of said premises.

V.

That under the said agreement, the said plaintiff and the defendants Tyapay, Garbin and Lesamis as copartners under the firm name of Klery Creek Mining Company, mined and [17] operated No. 1, above the Starr Association claim mentioned in the complaint; that the plaintiff, as copartner aforesaid, received the total receipts of said business, being gold-dust extracted from said claim, amounting in all to the sum of \$16,343.43, and paid all the expenses of said business amounting in all to the sum of \$7,788.62, leaving a balance due from said Greenberg to each of the defendants Garbin and Lesamis, of the sum of \$2,138.70.

That by virtue of said conveyance and agreement mentioned in the complaint, the said plaintiff, became and was indebted to each of the defendants Garbin and Lesamis, in a sum equal to one-third of one-fourth of the said gold-dust extracted, to wit, the sum of \$1,361.70, to apply on the purchase money agreed to be paid by said plaintiff under the said conveyance to him.

VI.

That on or about the 9th day of September, 1910,

the said copartnership was terminated and the books of said partnership closed.

VII.

That said plaintiff has not paid to the said Garbin and Lesamis the said amounts so due as aforesaid, except the sum of \$1,333.00 thereof, paid to said Garbin, and except the sum of \$1,000.00 thereof paid to said Jack Lesamis.

VIII.

That thereafter, and during the year 1911, the said plaintiff, on his own account and as tenant in common of said premises, operated and mined the said No. 1 Above the Star Association Claim, and extracted from said claim gold-dust of the amount and value of \$8,713.38; that under and by virtue [18] of said agreement and conveyance mentioned in the complaint the said plaintiff became indebted to the said Garbin and Lesamis, and to each of them, in the sum of \$726.12, the same being their share of the one-fourth of the gold-dust extracted from said claim, to be applied on said purchase price to be paid by said plaintiff as hereinbefore mentioned.

IX.

That said several amounts so due from said plaintiff to said Garbin and Lesamis were the amounts assigned to these answering defendants, as hereinbefore stated, and said amounts are now due and owing to these answering defendants, to wit, in the aggregate to said George Stanley the sum of \$2,893.-78, with interest on the sum of \$2,167.66 thereof from September 9th, 1910, at the rate of eight per cent per annum, and with interest on \$726.12 thereof

from August 10, 1911, at the rate of eight per cent per annum, and in the aggregate to Sam Sallo, the sum of \$3,226.77, with interest on \$2,500.65 thereof from September 9th, 1910, at the rate of eight per cent per annum, and with interest on \$726.12 thereof from the 10th day of August, 1911, at the rate of eight per cent per annum.

X.

That the plaintiff and the Robertson Magids Company, Robertson-Magids and Company, and Phillip Murphey had notice and knowledge at all times of the matters and things herein alleged; and with such knowledge participated in and entered into the transactions mentioned in the complaint; conniving and conspiring with the plaintiff with the fraudulent intent and design thereby to deprive and defraud these answering defendants and their predecessors in interest of their said [19] properties.

WHEREFORE these answering defendants pray that judgment may be entered in their favor and against the plaintiff for the respective sums due them and each of them, as aforesaid, with interest; that if any accounting be necessary for such purpose, that an accounting be had of all the matters and things in issue between said parties, and that upon such accounting being had, judgment be entered in favor of each of said parties for such sums or sum as such parties shall be entitled to, and against the other of said parties, according to the amounts due from each, and for costs to be taxed

to the prevailing parties herein, and for such other and further relief as to the Court shall seem just.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendants.

District of Alaska,

Nome Precinct,—ss.

George Stanley, being first duly sworn, deposes and says, that he is one of the defendants named in the foregoing answer, that he has read the same, knows the contents thereof, and that the same is true as he verily believes.

GEO. L. STANLEY.

Subscribed and sworn to before me this the 19th day of December, 1911.

[Seal]

G. J. LOMEN,

Notary Public in and for the District of Alaska.

[20]

Service of a copy of the foregoing Answer this 19th day of Dec., 1911, at — M., admitted.

WILLIAM A. GILMORE,

Of Attorneys for Plff.

[Endorsed]: #2349. No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis, Defendants. Answer of Stanley and Sallo. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Dec. 20, 1911. John Sundback, Clerk. By ———, Deputy. L. O. D. Cochran, G. J. Lomen, *and* Attorneys for Defendants. [21]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALO,

Defendants.

**Separate Answer of Jack Lesamis, John Tyapay and
Andy Garbin.**

Come now the defendants Jack Lesamis, John Tyapay, and Andy Garbin, and for their separate answer to the complaint of the plaintiff in the above-entitled action, deny, admit and allege as follows:

I.

Except as hereinafter admitted or qualified, they deny each and every allegation, matter and thing in said complaint contained.

II.

They admit that on the 19th day of March, 1910, they were the owners of the premises mentioned and described in the complaint, and that on said day they entered into the agreement and made the conveyances in said complaint in words and figures set forth, and that the consideration paid and to be paid by the plaintiff for and on account of said agreement and conveyance, were the considerations [22] mentioned in said instruments and none

other; that it was then and there understood and agreed that the provisions in said agreement mentioned, were to be furnished by said plaintiff free and without cost to said defendants, and that the deferred payment of Twenty-four Thousand Dollars mentioned in the said conveyance, was to be paid of the first money taken out of the ground, meaning and intending thereby that the first gold-dust extracted from the premises conveyed, to wit, the undivided one-quarter of the mining claims and property mentioned in said conveyance, was to be applied in payment of said Twenty-four Thousand Dollars; in other words, one-quarter of the gross output of said mining claims mentioned in the complaint, were to be so applied.

III.

The said defendants admit that the plaintiff paid the Six Thousand Dollars in said agreement and conveyance mentioned, and furnished provisions under said agreement, but defendants allege that said plaintiff, in violation of said agreement, charged up against these answering defendants, certain of said groceries so furnished, to the extent and aggregate amount of \$933.13.

IV.

Said defendants admit that under and pursuant to said agreement, they and the said plaintiff became and were mining copartners under the name and style of "Klery Creek Mining Company," and during the summer and fall of 1910, they operated as such copartners, one of the claims mentioned in

said conveyance, to wit, No. 1 Above the Star Association Claim on Klery Creek. [23]

V.

That the partnership above mentioned was for an indefinite term and terminable at the will of any of said partners, and the same was, at the close of the mining season, to wit, the 9th day of September, 1910, in fact dissolved by mutual consent and upon notice of the dissolution thereof given by these answering defendants to said plaintiff.

VI.

That a partial accounting and settlement of said partnership accounts was then and there had, and the books of said partnership then and there closed; that the total receipts of said partnership consisted of the gold-dust extracted from said No. 1 Above the Star Association Claim, and amounted in the aggregate of \$16,343.43, and that the total expenses of said partnership were in the aggregate \$7,788.62, leaving a balance of net profits of \$8,337.31, and leaving due each of said partners the sum of \$2,138.-70; that under said agreement and conveyance set forth in the complaint, these defendants were, in addition to said net profits, entitled to receive from said plaintiff to be equally divided between them, these answering defendants, one-fourth of said gross receipts above-mentioned, to wit, \$4085.85, and to each of these answering defendants the sum of \$1,361.70.

That said plaintiff received all of said gold-dust, except gold-dust amounting to the value of \$720.00, which last gold-dust was received by one Martin F.

Moran who is still indebted to said partnership therefor. That said plaintiff paid all the expenses of said partnership incurred in said mining operations, and paid to these answering defendants the further sums namely: To John Tyapay \$1,666.00, to Jack Lesamis, \$1,000.00 [24] and to Andy Garbin, \$1,333.00, and no more, leaving the following balance due from said plaintiff to each of these defendants, on account of said partnership transactions and on account of said one-quarter of the gross output of said mining operations, the latter to be applied in reduction of said indebtedness of twenty-four thousand dollars, as follows:

To John Tyapay the sum of \$1,688.90; to Jack Lesamis and his assigns Sam Sallo, \$2,500.65, and to Andy Garbin and his assign George Stanley, \$2,167.65.

VII.

That on or about the 2d day of Sept., 1911 the defendant Andy Garbin, for a valuable consideration, conveyed to George Stanley, his interest in said mining claims and property, including his interest in said balance of net profits and in said Twenty-four Thousand Dollars due from said plaintiff, and his interest in the royalties under the leases hereinafter mentioned; that the defendant Jack Lesamis on the same day, for a valuable consideration, conveyed to Sam Sallo, his interest in said claims and property, including his interest, in said balance of net profits and in said Twenty-four Thousand Dollars due from said plaintiff, and his interest in royalties under the leases hereinafter mentioned;

that said conveyances were made in good faith without any fraud or collusion whatever.

VIII.

That the said Stanley and Sallo, by reason of the said conveyances and assignments to them made as aforesaid, are now entitled to have and receive from the said plaintiff the said moneys so assigned to them as aforesaid, and that said defendant Tyapay is entitled to the said balance due him as above [25] specified.

IX.

That during the year 1911, the plaintiff, as a tenant in common with these answering defendants, and on his own account, mined and operated said No. 1 Above the Star Association Claim on Klery Creek, and extracted from said claim and converted to his own use, gold-dust of the amount and value of \$8,713.36; that if said gold-dust was extracted and said mining done at a loss to said plaintiff, such loss did not, as the defendants are informed and believe, exceed the sum of \$15,861.61; that under said agreement and conveyance mentioned in the complaint became and is now indebted to these defendants and their assigns Stanley and Sallo, above-mentioned, in a sum equal to one-fourth of all of said gold-dust so extracted, to wit; in the sum of \$2,178.35, that is to say, to said Tyapay \$726.12; to said Stanley \$726.12 and to said Sallo \$726.12.

X.

That these answering defendants are the owners of the Star Association placer mining claim in the Noatak-Kobuk Recording District, District of

Alaska, and that as such owners they are entitled to certain gold-dust extracted from said claim, to wit, $89\frac{1}{2}$ oz. $3\frac{1}{2}$ dwt., of gold-dust of the value of \$1,629.94; that said plaintiff, on or about the 1st day of September, 1911, took possession of said gold-dust without authority or consideration therefor, and converted the same to his own use, to the damage of these answering defendants in the sum of \$1,629.94; that by reason of the premises the plaintiff is now indebted to these answering defendants and their assigns Stanley and Sallo, in the sum of \$8,955.50, [26] with interest on \$5,639.71 thereof from the 9th day of September, 1910, at the rate of eight per cent per annum, and with interest on the sum of \$2,178.35 thereof from the 10th day of August 1911, at the rate of eight per cent per annum; and on \$1,629.94 thereof from September 1st, 1911, at the rate of eight per cent per annum.

XI.

These answering defendants admit that on or about the 24th day of October, 1911, one Phillip Murphey, claiming to be the assignee of Robertson Magids Company, and Robertson Magids & Company, of certain accounts of the alleged aggregate amount of \$17,124.00, began an action at law against these answering defendants, and the plaintiff herein, to recover said amount with interest and costs and sued out a Writ of Attachment in said action; that said attachment has been levied upon certain of the properties mentioned in the complaint and in the conveyances above-mentioned, but the defendants allege that the accounts so assigned to said Phillip

Murphey and so sued upon as aforesaid, were the accounts incurred by the plaintiff Greenberg, in his mining operations during the year 1911 above-mentioned, and were for expenses in said mining operations; that said accounts and expenses were caused, by said plaintiff, to be fraudulently charged against the Klery Creek Mining Company above mentioned, and were fraudulently caused to be assigned to said Phillip Murphey, and said action was collusively and fraudulently caused by said plaintiff to be instituted and said attachment to be levied with the fraudulent intent and purpose on the part of said plaintiff of cheating and defrauding these defendants of their said properties. That with full knowledge on the part of said [27] Robertson Magids Company and Robertson Magids & Company and said Phillip Murphey, of the rights and interests of the defendants herein, and of the said fraudulent intent and purpose on part of said plaintiff, the said Robertson Magids Company the said Robertson Magids & Company, and the said Phillip Murphey aided, connived and conspired with said plaintiff in said fraudulent acts, purposes and intent aforesaid.

That plaintiff is a merchant and operator of large means owning many mercantile concerns and branch stores in various places in Alaska, and is the President and principal stockholder of the Robertson Magids Company and the principal number of said Robertson Magids and Company and that said Phillip Murphey is one of his agents and employees in said businesses, and is the agent and attorney in fact of said plaintiff, and as such attorney in fact,

authorized to transact all manner of business for and on behalf of said plaintiff.

That said plaintiff, as a tenant in common of the said defendants herein, and not otherwise, during the year 1911, operated and mined upon that certain mining claim known as No. 1 Above the Star Association claim; that said operation and mining was fraudulently conducted by said plaintiff, in the name of the Klery Creek Mining Company, when in fact, as the plaintiff the said Robertson Magids Company, the said Robertson Magids and Company and said Phillip Murphey then and there and at all times well knew, said mining was done and said claim was operated by and for the sole use and benefit of the plaintiff, except in so far as the said plaintiff was liable to account to his cotenants for their share of the net profits of said mining and operation, if any. [28]

That plaintiff fraudulently caused to be charged against said Klery Creek Mining Company, the expenses of said mining and operation during the year 1911, including the items embraced within the accounts assigned to said Phillip Murphey, above-mentioned, being accounts assigned to said Murphey mentioned in the complaint.

That said plaintiff fraudulently caused said accounts, without consideration paid therefor, as defendants are informed and believe, to be assigned to said Murphey and thereafter caused said action to be brought and said attachment to be issued and levied as aforesaid.

That the plaintiff herein, is, as defendants are in-

formed and believe, the real party in interest in said action so instituted by said Phillip Murphey. That said Murphey received and now holds the assigned accounts mentioned, upon and under a secret and fraudulent trust for the use and benefit of the plaintiff Greenberg, and under such trust prosecutes said action and attachment as a part of the said scheme of the said plaintiff to defraud the defendants herein of their said mining claims and property.

XII.

These defendants further allege that the only indebtedness of the Klery Creek Mining Company is a small account in favor of S. B. Marshal and Kayhill in the sum of \$2.50, and that these defendants are abundantly able to pay the same.

That the assets of said partnership, the Klery Creek Mining Company, is the indebtedness of said plaintiff Greenberg to the defendants herein and on account of \$720.00 due from Martin F. Moran.
[29]

XIII.

These answering defendants admit that on August 10th, 1911, certain leases of a number of said mining claims belonging to said plaintiff and these answering defendants were made and executed; but these defendants allege that said leases were executed by said owners as tenants in common of said mining claims, and not by the Klery Creek Mining Co.

WHEREFORE these defendants pray that an accounting be had between said parties and that in such accounting an account be also made of the

amounts due from said plaintiff to the defendants on account of moneys due under said purchase money contract above mentioned, and of all other matters and things growing out of said partnership or matters connected therewith, and that judgment be entered in favor of the parties thereto entitled for such amounts as may be due from the parties each to the other, and for their costs and disbursements herein, and for such other and further relief as to the Court shall seem just.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendants.

District of Alaska,

Nome Precinct,—ss.

Andy Garbin, being first duly sworn, deposes and says:

That he is one of the defendants named in the foregoing answer, that he has read the same, knows the contents thereof, and that the same is true as he verily believes.

ANDY GARBIN.

Subscribed and sworn to before me this the 19th day of December, 1911.

[Seal]

G. J. LOMEN,

Notary Public in and for the District of Alaska.

[30]

Service of a copy of the foregoing Answer this 19th day of Dec. 1911, at — M., admitted.

WILLIAM A. GILMORE,

Of Attorneys for Plff.

[Endorsed]: No. #2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lasamis et al., Defendants. Answer of Garbin, Tyapay and Lesamis. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Dec. 20, 1911. John Sundback, Clerk. By _____, Deputy. L. O. D. Cochran, G. L. Lomen, Attorneys for Defendants, Nome, Alaska. [31]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GAR-
BIN, GEORGE STANLEY and SAM SALO,
Defendants.

**Reply to Separate Answer of Jack Lesamis, John
Tyapay and Andy Garbin.**

Comes now the plaintiff and for reply to the separate answer of Jack Lesamis, John Tyapay and Andy Garbin, admits, denies and alleges as follows:

I.

Replying to paragraph II of said answer, plaintiff denies the affirmative allegations thereof, and specifically denies that it was ever the meaning or intention of the agreement mentioned in said paragraph, as stated in said paragraph, or any other meaning or

intention than that stated in plaintiff's complaint.

II.

Replying to paragraph III of said answer, plaintiff denies that he charged up against the said defendants certain groceries to the extent and amount of Nine Hundred Thirty-three Dollars and Thirteen Cents (\$933.13) in violation of the said agreement or at all. [32]

III.

Replying to paragraph V of said answer, plaintiff denies that the said partnership was terminable at the will of any of said partners, or that said partnership was, on the 9th day of September, 1910, dissolved by mutual consent, or otherwise, or at all.

IV.

Answering paragraph VI of said answer, plaintiff denies that any partial account or settlement of said partnership accounts was on said 9th day of September, 1910, made or attempted to be made, or that the books of said partnership were then and there closed or attempted to be closed; and said plaintiff further denies all of the material affirmative allegations of said paragraph, and the whole thereof, except that he admits that one Martin F. Moran is still indebted to said partnership for gold received and that the plaintiff in the fall of 1910, paid to the defendant John Tyapay Sixteen Hundred and Sixty-six Dollars (\$1666.00), and to the defendant Jack Lesamis the sum of One Thousand Dollars (\$1,000.00) and to the defendant Andy Garbin the sum of Thirteen Hundred and Thirty-three Dollars (\$1333.00), which said sums were paid from the profits of the mining

operations of said copartnership for the year 1910, and which were paid and intended to be paid to said defendants and each of them to apply on the said balance payment of Twenty-four Thousand Dollars (\$24,000.00) mentioned in said partnership agreement described in plaintiff's complaint.

And plaintiff particularly denies that at said time [33] or any other time there was a balance due to any of the said defendants from the gross output or net output of the operations of any of said partnership property in the sum mentioned in said paragraph or in any sums, or at all.

V.

Replying to paragraph VII of said answer, plaintiff denies that the said Andy Garbin for a valuable consideration conveyed his interest in said mining claims and property to the defendant George Stanley, or that he made the assignment alleged therein to the said Stanley for a valuable consideration; or that the said defendant Jack Lesamis on said date, or at any time for a valuable consideration conveyed his interests in said partnership to the defendant Sam Salo or made the assignments therein alleged to the said Sam Salo for a valid consideration; and plaintiff alleges that said conveyances and assignments were made as alleged in plaintiff's complaint.

VI.

Replying to paragraph VIII of said answer, plaintiff denies that the said defendants Stanley and Salo are now or at any time have been entitled to receive from the plaintiff, or from the said partnership, any

of said partnership property or moneys due thereunder.

VII.

Replying to paragraph IX of said answer, plaintiff denies each and every allegation, matter and thing therein contained and the whole thereof and particularly denies that he [34] is indebted to the defendants in any sum or sums whatsoever.

VIII.

Replying to paragraph X of said answer, plaintiff denies each and every allegation, matter and thing therein contained and the whole thereof, and particularly denies that he is indebted to the defendants in the sums therein named, or in any other sums whatsoever.

IX.

Replying to paragraph XI of said answer, plaintiff denies that the said accounts assigned to one Philip Murphy, mentioned in said paragraph, were fraudulently charged against the said Klery Creek Mining Company, or fraudulently assigned to said Philip Murphy, or that said action was collusively or fraudulently caused to be instituted, or that said action was brought for the purpose of cheating or defrauding the defendants, or that the said Robinson-Magids & Co., and the said Philip Murphy ever aided, connived and conspired in any way as alleged in said paragraph.

Plaintiff admits that he is one of the copartners of the firm of Robinson, Magids & Co., and that said Philip Murphy is one of the agents and employees

of said company, and the agent and attorney in fact of the plaintiff.

Plaintiff denies that during the year 1911, the plaintiff, as a tenant in common with the said defendants, operated and mined on that certain placer mining claim known as No. 1 Above Star Association claim, or that said operations and mining was fraudulently conducted by the plaintiff in the name of the Klery Creek Mining Company. [35]

Plaintiff denies that he ever fraudulently caused to be charged against said Klery Creek Mining Company the expenses of said operations, but alleges that all of the expenses of the operations conducted during the said year 1911 on said ground, was the expense and cost of said Klery Creek Mining Company as alleged in said complaint.

Plaintiff denies that he fraudulently caused said accounts to be assigned to the said Philip Murphy, but alleges that said assignment was made in good faith by said Robinson, Magids & Co., for the purpose of collection.

And plaintiff further denies that the said Murphy now holds the said assigned accounts now sued upon under any agreed or fraudulent trust for the use and benefit of the plaintiff, Greenberg, or at all, but plaintiff alleges that said suit was brought in good faith for the purpose of collecting said accounts, which are justly and legally due to the said Robinson, Magids & Co.

X.

Replying to paragraph XII of said answer, plaintiff denies each and every allegation, matter and

thing therein contained.

XI.

Replying to paragraph XIII of said answer, plaintiff denies that the leases mentioned in said paragraph were ever executed by the defendants as tenants in common or otherwise, or in any other manner than as members of the Klery Creek Mining Company. [36]

WHEREFORE, plaintiff having fully replied to the answer of the defendants, prays for the relief demanded in his complaint.

WILLIAM A. GILMORE and
J. F. HOBBS,
Attorneys for Plaintiff.

United States of America,
District of Alaska,—ss.

H. Greenberg, being first duly sworn, deposes and says:

That he has heard read the above and foregoing reply, knows the contents thereof and the same is true as he verily believes.

H. GREENBERG.

Subscribed and sworn to before me this 8th day of August, A. D. 1913.

[Seal]

L. W. HAYDEN,
Notary Public in and for the District of Alaska.

My commission expires October 13, 1913. [37]

Service of the above and foregoing reply admitted by receipt of copy this 8 day of August, 1913.

G. J. LOMEN,
Of Attorneys for Defendants.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Reply to Separate Answer of Jack Lesamis, Jack Tyapay and Andy Garbin. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 8, 1913. John Sundback, Clerk. By ———, Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for Plaintiff. [38]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GAR-
BIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

**Reply to Separate Answer of George Stanley and
Sam Sallo.**

Comes now the plaintiff and for reply to the separate answer of defendants George Stanley and Sam Sallo, admits, denies and alleges as follows:

I.

Replying to paragraph III of said answer, plaintiff denies that the conveyances and assignments mentioned and described in said paragraph were ever

made for a valuable consideration or any consideration whatever.

II.

Replying to paragraph IV of said answer, plaintiff denies that the conveyances and assignments mentioned and described in said paragraph IV were ever made for any valuable consideration, or any consideration at all.

III.

Replying to paragraph V of said answer, plaintiff [39] denies each and every allegation, matter and thing therein contained and the whole thereof, and particularly denies that the plaintiff is indebted to defendants in the sum or sums mentioned in said paragraph, or in any sum or sums whatsoever.

IV.

Replying to paragraph VI of said answer, plaintiff denies that on the 9th day of September, 1910, or any other time, said copartnership was terminated or that the books of said partnership were closed.

V.

Replying to paragraph VII of said answer, plaintiff admits that he paid the sums mentioned therein to Garbin and Lesamis, but denies each and every other allegation, matter and thing therein contained.

VI.

Replying to paragraph VIII of said answer, plaintiff denies each and every allegation, matter and thing therein contained and the whole thereof.

VII.

Replying to paragraph IX of said answer, plaintiff denies each and every allegation, matter and

thing therein contained, and the whole thereof, and particularly denies that he is indebted to the defendants in the sum or sums mentioned in said paragraph, or in any other sum or sums whatsoever.

VIII.

Replying to paragraph X of said answer, plaintiff [40] denies each and every allegation, matter and thing therein contained and the whole thereof.

WHEREFORE, plaintiff having fully replied to the answer of the said defendants, Stanley and Sallo, prays for the relief demanded in his complaint.

WILLIAM A. GILMORE and
J. F. HOBBS,

Attorneys for Plaintiff.

United States of America,
District of Alaska,—ss.

H. Greenberg, being first duly sworn, deposes and says :

That he is the plaintiff in the above-entitled action ; that he has heard read the above and foregoing reply, knows the contents thereof and the same is true as he verily believes.

H. GREENBERG.

Subscribed and sworn to before me this 8th day of August, A. D. 1913.

[Seal] L. W. HAYDEN,
Notary Public in and for the District of Alaska.

My commission expires Oct. 13, 1913. [41]

Service of the above and foregoing reply acknowledged by receipt of copy this 8th day of August, 1913.

G. J. LOMEN,
Of Attorneys for Defendants.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Reply to Separate Answer of George Stanley and Sam Sallo. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 8, 1913. John Sundback, Clerk. By ———, Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for Plaintiff. [42]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN,
GEORGE STANLEY and SAM
SALLO,

Defendants.

Supplemental Answer and Cross-complaint.

Come now the defendants George Stanley and Sam Sallo, and for their supplemental answer and for a cross-complaint herein, allege:

I.

That said action was commenced in this court on

the 1st day of November, 1911, by the filing of the complaint with the Clerk of said Court, and the issuing of a summons thereon.

That on the 20th day of December, 1911, the defendants above named filed their answer in said action, the said defendants, Stanley and Sallo filing a joint answer.

That said action is brought for the dissolution of an alleged mining copartnership, and for an accounting.

II.

That since the commencement of said action and the joining of issue therein, the plaintiff has neglected and refrained from mining or operating the mining claims mentioned in the complaint, and from extracting gold therefrom, or from [43] any or any part of said claims, and has neglected and refused to pay to the defendants the sum of Twenty-four Thousand dollars (\$24,000.00), the balance of the purchase price agreed by him to be paid according to the terms of the contract and conveyance set forth in the complaint herein.

III.

That it was understood and agreed by the plaintiff and the defendants, parties to the contract and deed of conveyance mentioned in the complaint, and it was contemplated in and by said contract and conveyance that the plaintiff should and would, with reasonable diligence, operate and mine the premises described in the complaint and extract gold therefrom; and that out of the first money taken out of the ground purchased, to wit, the undivided

one-fourth ($\frac{1}{4}$) of said premises, and meaning and intending the first or gross amount of gold-dust extracted therefrom, he, the said plaintiff, would and should pay to the grantors in said conveyance the said sum of Twenty-four Thousand Dollars (\$24,000.00).

And it was further understood and agreed by and between the parties to the said contract and conveyance mentioned in the Complaint, that said Twenty-four Thousand Dollars should and would be paid within a reasonable time; that more than a reasonable time has long since elapsed.

IV.

That since issue joined in said action a part of said claims have been mined by third persons under leases given by plaintiff and defendants, on a royalty basis; that the plaintiff has collected and received from said lessees one-half ($\frac{1}{2}$) of said royalties amounting to the sum of [44] Twelve Hundred and Twenty-six and $\frac{38}{100}$ Dollars but that plaintiff has neglected and refused to pay said royalties so received by him, or any part thereof, in liquidation of said Twenty-four Thousand Dollars, or any part thereof, and has neglected and refused to account to the said defendants or any of them, for the royalties so received, or any part thereof.

V.

That during the years 1911, 1912, and in each of said years, the defendants Stanley and Sallo duly performed the assessment work on each of the following claims mentioned in the complaint, to wit:

“1 and 2 Above Discovery on Bear Creek; The Rich Association on Bear Creek; the Central Association, 1 Below and 1 and 2 Above on Central Creek; Discovery Claim on Jack Creek and Rocky Association Rock Creek; in 1912 also on the No. 6 Below on Klery Creek and California Association; and in 1913 also on the No. 2 Above on Klery Creek; said Rocky Association, Discovery on Jack Creek and Fraction between Discovery and Star Association; said assessment work being of the value of, and aggregating in all the sum of Twenty-four Hundred Dollars (\$2400.00).”

That said plaintiff has neglected and refused to pay or contribute his proportion of said assessment work, to wit one-half ($\frac{1}{2}$) thereof, to wit, One Thousand Two Hundred Dollars, (\$1,200.00) or any part thereof.

VI.

That on or about the 13th day of August, 1911, the defendant Andy Garbin, for valuable consideration, conveyed to the defendant Stanley, his interest in the premises described in the complaint, and assigned to said Stanley, his interest in the profits of said premises and in said Twenty-four Thousand Dollars due from said plaintiff, and his interest in all royalties due under the leases above mentioned; and that on the same day defendant Jack Lesamis, for a valuable consideration, conveyed to the defendant Sallo, his interest [45] in said premises and assigned his interest in the profits of said premises and

in said Twenty-four Thousand Dollars due from said plaintiff, and his interest in all royalties under the leases above mentioned.

VII.

That by reason of the premises there is now due and owing from plaintiff to the defendants Stanley and Sallo, on account of the said purchase money agreed to be paid by plaintiff for said undivided one-fourth ($\frac{1}{4}$) of said premises, two-thirds of the sum of Twenty-four Thousand Dollars (\$24,000.00); to wit, \$18,000.00. That there is due from said plaintiff to said defendants Stanley and Sallo on account of assessment work performed by them above mentioned, the sum of One Thousand Two Hundred Dollars.

WHEREFORE defendants Stanley and Sallo pray that they have and recover judgment against plaintiff H. Greenberg, for the sum of Nineteen Thousand and Two Hundred Dollars, in addition to all money due them from said plaintiff on the accounting to be had in this action, and for such other and further relief as to the Court may seem just and proper, and for their costs and disbursements herein.

O. D. COCHRAN,
G. J. LOMEN,

Attorneys for Defendants Stanley and Sallo. [46]
United States of America,
District of Alaska,—ss.

Geo. Stanley, being first duly sworn, deposes and says: That he is one of the defendants named in the foregoing supplemental answer and cross-complaint;

that he has read the same, knows the contents thereof, and that the same is true as he verily believes.

GEO. L. STANLEY.

Subscribed and sworn to before me this the 8th day of August, 1913.

[Seal]

G. J. LOMEN,

Notary Public in and for the District of Alaska.

My comm. expires June 27, 1917.

Service of the within supplemental answer and cross-complaint of defendants Stanley and Sallo is hereby admitted at Nome, Alaska, Aug. 12, 1913.

WILLIAM A. GILMORE,

Of Attys. for Plaintiff.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, plaintiff, vs. Jack Lesamis, Defendants. Supplemental Answer and Cross-complaint. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 12, 1913. John Sundback, Clerk. By _____, Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendants. [47]

*In the District Court for the District of Alaska,
Second Division.*

No. —

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

**Reply and Answer to Supplemental Answer and
Cross-Complaint of Defendants George Stanley
and Sam Sallo.**

Comes now the plaintiff H. Greenberg, and for reply and answer to the supplemental answer and cross-complaint of defendants George Stanley and Sam Sallo admits, denies and alleges as follows:

I.

He admits the allegations of paragraph I thereof.

II.

Answering paragraph II thereof, plaintiff denies each and every allegation, matter and thing therein contained, and the whole thereof, except as herein-after alleged.

III.

Answering paragraph III thereof, plaintiff denies, each and every allegation, matter and thing therein contained and the whole thereof.

IV.

Answering paragraph IV thereof, plaintiff denies

each [48] and every allegation, matter and thing therein contained and the whole thereof, except that he admits that certain leases were given to third parties on the Klery Creek Mining Company's mining property, and that the plaintiff received a small amount of gold-dust as royalty thereof, which said royalty was applied by the plaintiff in the discharge and payment of the Klery Creek Mining Company's partnership indebtedness.

V.

Answering paragraph V thereof, plaintiff alleges that he has no knowledge or information of the facts therein stated, as to whether or not the defendants Stanley and Sallo did or did not perform the alleged work therein mentioned, and therefore deny the same.

And plaintiff further alleges in answer thereto, that if said Stanley and Sallo did perform the assessment work mentioned therein, that the same was done at the instance and request of the defendants Lesamis and Garbin who were and are members of the Klery Creek Mining Company, owner of said placer claims.

VI.

Answering paragraph VI, plaintiff denies each and every allegation, matter and thing therein contained and the whole thereof save and except that the defendants Andy Garbin and Jack Lesamis pretended to transfer certain interests in real and personal property of the Klery Creek Mining Com-

pany to the defendants Stanley and Sallo, but that the same was done without any consideration whatever.

VII.

Answering paragraph VII thereof, plaintiff denies [49] each and every allegation, matter and thing therein contained and the whole thereof and particularly denies that there is now due and owing from the plaintiff to the defendants Stanley and Sallo the sums mentioned in said paragraph or any sum or sums whatsoever.

And for an affirmative reply and answer to the supplemental answer and cross-complaint of defendants George Stanley and Sam Sallo, plaintiff alleges as follows:

I.

That at all times since the 19th day of March, 1910, it was the intention and meaning of the Klery Creek Mining Company, as expressed in the written contract of partnership set forth in plaintiff's complaint in this action, that the plaintiff and the defendants Andy Garbin, Jack Lesamis and John Tyapay, jointly as copartners and not otherwise, should mine and operate the placer claims belonging to said Klery Creek Mining Company described in the plaintiff's complaint and after deducting the expenses of operations from the gross output, from the first profits pay to the said Garbin, Lesamis and Tyapay the said sum of Twenty-four Thousand Dollars (\$24,000.00) and not otherwise.

II.

That on or about the —— day of September, 1911,

the said defendants Garbin and Lesamis refused to further comply with the terms of the said agreement of copartnership and refused to further mine and operate said claims or assist the plaintiff as a copartner in operating the same, and at all times since said time have contended and claimed that the said copartnership was dissolved. [50]

III.

That for and because of said refusal of said defendants Garbin and Lesamis to further mine and operate said placer claims as copartners under the terms of said agreement, plaintiff instigated this action for an accounting and dissolution of said copartnership, and the same has been pending trial ever since. That the said defendants George Stanley and Sam Sallo were not parties to the said partnership agreement and were not interested in any way in the formation of said Klery Creek Mining Company, and plaintiff has never at any time recognized the said defendants Stanley and Sallo as copartners in said Klery Creek Mining Company and does not now recognize them as copartners but still contends and claims that the said defendants Lesamis, Garbin and Tyapay are members of said copartnership, and that the plaintiff is entitled to an accounting between himself and said defendants Lesamis and Garbin and Tyapay, under the original terms and conditions of said copartnership agreement, and is also entitled to all other relief prayed for in his original complaint against said defendants.

WHEREFORE plaintiff having fully replied to the supplemental answer and cross-complaint of

said defendants Stanley and Sallo, prays the Court for the relief demanded in his complaint.

J. F. HOBBS and
WILLIAM A. GILMORE,
Attorneys for Plaintiff. [51]

United States of America,
District of Alaska,—ss.

H. Greenberg, being first duly sworn, says: That he is the plaintiff in the above and foregoing action, that he has heard read the above and foregoing reply and knows the contents thereof, and the same is true as he verily believes.

H. GREENBERG.

Subscribed and sworn to before me this 13th day of September, A. D. 1913.

[Seal] WILLIAM A. GILMORE,
Notary Public in and for the District of Alaska.
My commission expires July 27, 1915.

Service of above and foregoing reply admitted by copy this 13th day of Sept. 1913.

G. J. LOMEN,
Of Attys. for Defs.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Reply and Answer to Supplemental Answer and Cross-complaint of Defendants George Stanley and Sam Sallo. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sept. 15, 1913. J. Sundback, Clerk. By J. A. B.

Deputy. J. F. Hobbes and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. [52]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS et al.,

Defendants.

Opinion.

On November 1st, 1911, plaintiff H. Greenberg filed his petition in this court alleging that on the 19th day of March, 1910, plaintiff and defendants, Jack Lesamis, John Tyapay and Andy Garbin entered in to a copartnership agreement to work and mine certain claims described in the complaint; that said copartnership has never been dissolved; and that plaintiff is entitled to an accounting, and prays that an accounting be had and that the copartnership be dissolved.

Defendants Lesamis, Tyapay and Garbin admit in their answer, that

“they and the said plaintiff became and were mining copartners under the name and style of Klery Creek Mining Co. and during the summer and fall of 1910 they operated as such copartners one of the claims mentioned in said conveyance, to wit: No. One Above the Star Association Claim on Klery Creek,”

but allege that the partnership was dissolved by mutual consent on the 9th day of September, 1910, also allege a conveyance of all their claims and interests to the defendants Stanley and Sallo on the 2d day of September, 1911. The defendants Stanley and Sallo, by their answer, allege that they purchased the interests of Garbin and Lesamis, and are now the owners and have been such owners since September 2d, 1911. Also by their supplemented answer and cross-complaint set up the performance of assessment work on the claims, and allege that the balance of the twenty-four thousand dollars (\$24,000.00) is now due because of plaintiff's failure to work the mining claims with proper diligence.

Plaintiff by reply denies the affirmative matter of the various answers, also the cross-complaint.

From these pleadings it will be seen that the main issues to be decided by the Court are: [53]

First, was the partnership between plaintiff and defendants Lesamis, Tyapay and Garbin, dissolved by mutual consent in September, 1910?

Second, from what fund or proceeds was the balance of the purchase price of twenty-four thousand dollars (\$24,000.00) to be paid?

Third, were the conveyances to Stanley and Sallo valid or void for want of consideration, and if valid, did they take title subject to all obligations of the partnership?

Fourth, are the defendants entitled to credit for expenditures and work done on the claims in controversy to prevent a forfeiture?

The first question should be answered in the negative. All the acts of defendants subsequent to the cessation of operations, in the fall of 1910 up to the time work was closed down in the fall of 1911, were inconsistent with the theory that the partnership had been dissolved in 1910.

In answering the second question, it must be admitted that the deed and contract between plaintiff and defendants were not as explicit as they might be, and if it were not for the interpretation placed upon the instruments by the defendants as indicated by their settlement, in the fall of 1910, and by the subsequent deed executed by two of the defendants, and the general conduct of all of the defendants, the Court would be inclined to construe the contracts to mean that the twenty-four thousand dollar (\$24,000.00) balance of the purchase price should be paid from the proceeds of plaintiff's one-fourth interest, but from the acts of the defendants, it becomes very clear that the intent of the parties was that the balance of the purchase price was to be paid from the net proceeds of the mining claims mentioned in the copartnership agreement and deed.

The third proposition to be passed upon by the Court is made clear by the testimony of the defendants. No consideration passed from the grantee to the grantors and as against the plaintiff, at least, the conveyances are void. Defendants Stanley and Sallo can be no more than trustees for defendants Lesamis and Garbin. In view of the fact that defendants Stanley and Sallo appear to hold the title in trust for Lesamis and Garbin, any work done by

them for the purpose of protecting the title and preventing a forfeiture should be allowed in the final accounting, and plaintiff Greenberg should be [54] required to pay one-fourth of such necessary expenditures.

Plaintiff Greenberg is entitled to an accounting, and the mining claims mentioned in the complaint are liable for the debts of the copartnership.

The copartnership should be dissolved and the assets of the copartnership sold and from the proceeds the costs and expenses of this litigation should first be paid, then the indebtedness of the copartnership, after which the balance of the purchase price agreed to be paid by plaintiff Greenberg, and the balance, if any, should be divided equally between the plaintiff Greenberg and the defendants Lesamis, Tyapay and Garbin, or their assigns.

For the purpose of making findings, the Court suggests that at the close of the mining season of 1910, the defendants Lesamis, Tyapay and Garbin were each entitled to receive the sum of two thousand four hundred and sixty-three dollars and eighty-nine cents (\$2,463.89). Lesamis received one thousand *seventeen* hundred twenty-six dollars (\$1,726.00); Tyapay, two thousand dollars (\$2,000.00); Garbin, one thousand five hundred and twelve dollars and nineteen cents (\$1,512.19). The balance remained on hand and they should each receive credit for the respective amounts to be applied on the next years expense. Said defendants should each pay one-fourth of the 1911 expense, less this credit from the 1910 operations, and plaintiff Greenberg should, after ap-

plying the gross output for that year, be charged with the balance of the expense for the year 1911. It does not appear from the testimony that the plaintiff Greenberg contributed anything towards the expense for the year 1911 except by securing a line of credit with the Robinson-Magids Company, and everything furnished by said company was charged to the Klery Creek Co. and not to the plaintiff Greenberg.

Let findings of fact and conclusions of law be prepared in accordance with this memorandum opinion.

CORNELIUS D. MURANE,

U. S. District Judge.

Dated this 21st day of October, 1913, Nome, Alaska. [55]

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg vs. Jack Lesamis et al. Memo. Opinion. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 21, 1913. John Sundback, Clerk. By J. A. B. [56]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN,
GEORGE STANLEY and SAM SALLO,

Defendants.

Findings of Fact and Conclusions of Law.

This cause being an equitable action, having come on regularly to be heard before the Court on the 15th day of September, 1913, and the trial thereof continuing thereafter from day to day to the 19th day of September, 1913, the plaintiff appearing in person and by his attorneys, Messrs. J. F. Hobbes and William A. Gilmore, and the defendants appearing in person and by their attorney, G. J. Lomen, Esq., and witnesses on behalf of the plaintiff and defendants having been sworn and testified, and documentary evidence and depositions on behalf of the parties hereto having been read and introduced in evidence, and the Court having heard the arguments of counsel for the respective parties and having thereafter and on the 21st day of October, 1913, rendered and filed its written opinion herein, and being now fully advised in the premises, makes the following findings of fact and conclusions of law, to wit:

FINDINGS OF FACT.

I.

The Court finds that heretofore and on the 19th day of March, 1910, and for a long time prior thereto, the defendants, Jack Lesamis, John Tyapay and Andy Garbin were the owners and in the possession of certain placer mining claims situated in the Noatuk-Kobuk Mining and Recording District, District of Alaska, and that legal title to said placer mining claims stood in the names of said defendants by virtue of certain placer locations by them made in said mining district; [57] that on the said 19th day of

March, 1910, the said defendants, Jack Lesamis, John Tyapay and Andy Garbin, entered into certain written instruments whereby and wherein they agreed with the plaintiff to form a copartnership to work and mine the said mining claims, and to give and convey to the plaintiff an undivided one-quarter ($\frac{1}{4}$) interest in all of said placer claims, lode claims and water rights then owned, acquired or to be acquired by said defendants in consideration of the plaintiff furnishing them with provisions from time to time from the said 19th day of March, 1910, to July, 1910, and agreed to pay the defendants the sum of six thousand dollars (\$6,000) in cash and thereafter the further additional sum of twenty-four thousand dollars (\$24,000) from the net profits of said mining operations to be thereafter conducted and had upon said mining claims; that the said agreement between the parties, plaintiff and said defendants, was reduced to writing and incorporated in the following two written instruments, which said instruments were executed, witnessed and delivered between the parties, to wit:

“AGREEMENT.

Klery Creek March 19th, 1910.

Know all men by these presents That we the undersigned John Tyapay Andy Garbin and Jack Lesamis of the Noatak-Kabuk recording District, District of Alaska, and H. Greenberg of Nome Ala. enter into this agreement, that for the sum of one dollar lawful money of the United States in hand paid and other Valuable services, for same services H. Greenberg is, and shall be a full fledged partner

with the above-mentioned parties & have one quarter undivided interest in all claims, lodes, water rights acquired or to be acquired and owned by the above mentioned parties. It is further agreed that H. Greenberg is to furnish the above mentioned parties with Provisions from time to time up till July, 1910.

ANDY GARBIN. (Seal)

JACK LESAMIS. (Seal)

JOHN TYAPAY. (Seal)

H. GREENBERG.

Witnesseth:

SAM MAGIDS.

HERMAN BERNHARDT." [58]

"This indenture made the 19th day of March in the year of our Lord one thousand nine hundred and ten between the undersigned Andy Garbin, Jack Lesamis and John Tyapay of the Noatak-Kobuk Recording District, of the District of Alaska parties of the first part and H. Greenberg of Nome, Alaska party of the second part witness, That the said parties of the first part, for and in consideration of the sum of Thirty thousand dollars (\$30000.00)

Six thousand dollars (\$6000.00) in lawful money of the United States of America to them in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, and the balance of twenty four thousand to be paid of the first money taken out of the ground hath, granted, bargained, sold, remised, released, and forever quit-claimed and by these presents doth grant, bargain, sell, remise release and forever quitclaim unto the said party of the second part, his heirs and assigns one quarter ($\frac{1}{4}$) un-

divided of all mining claims located surveyed, recorded and held by said Parties of the first part situated in Noatak-Kobuk mining district district of Alaska together with all the dips, spurs and angles and also the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendent and appurtenant or therewith usually had or enjoyed; and also all and singular the tenements, hereditaments and appurtenances, thereunto belonging, or in any wise appertaining, and the rents issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well as in law as in equity, of the said party of the first part, of in or to the said premises and every part or parcel thereof, with appurtenances.

To have and to hold, all and singular, *he* said Premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever warranting and defending the same against the claims of all persons, save and except the United [59] States.

ANDY GARBIN. (Seal)

JACK LESAMIS. (Seal)

JOHN TYAPAY. (Seal)

Witnesseth:

SAM MAGIDS.

HERMAN BERNHARDT."

II.

The Court finds that thereafter and at all times since said 19th day of March, 1910, plaintiff has fulfilled and carried out the terms, covenants and condi-

tions on his part to be done, made, kept and performed, and did furnish the defendants with the provisions mentioned in said written instrument and did pay to the defendants the sum of \$6,000.00 in lawful money of the United States, and the said defendants thereupon and in pursuance of the terms of said written instrument, entered into the mining copartnership known, named and called the Klery Creek Mining Company, and thereupon began mining operations upon said placer claims heretofore referred to and hereafter named and set forth.

III.

The Court finds that at the time said instruments were executed and delivered and at the time said mining copartnership was formed, the said defendants Jack Lesamis, John Tyapay and Andy Garbin, were the owners and in the possession of the following placer mining claims, to wit:

Discovery Claim, One Above Discovery, Two Above Discovery, Six Below Discovery, Fraction between Two and Three Above Discovery, Association Fraction between Discovery and Starr, California Association, L. L. Klery Creek opposite Discovery, Butte Association, R. L. Klery Creek opposite Discovery, Oregon Association (Bench and Creek) adjoining upper and Starr, and lower end of 1 and 2 Above Discovery, Bench Seven, opposite Creek Claim Seven Below Gold Hill Association R. L. opposite 1, 2, 3 and 4 Creek Claims. All the foregoing claims being situated on Klery Creek, or its benches; also Honey claims, one and two, between Klery and Bear Creeks, Northpole Association L. L. adjoining

claims, last above described, One and Two Above Discovery, on Bear Creek, Goldfield Association opposite 1 and 2 Above and 1 Below L. L. Bear [60] Creek, Rich Association on Bear Creek, and adjoining 2 Above Central Association, adjoining No. 1 Below on Central Creek Discovery on Central Creek. One Above on Central Creek, One Below on Central Creek, Fraction (Garbin) on Central Creek, Discovery Claim on Jack Creek, a tributary of Klery; all interest of said first party in all mining claims owned in whole or in part in Rocky Creek, in said mining and recording district.

And the Court further finds that all of said mining claims were put into said mining copartnership as assets by said defendants, and thereupon the said Klery Creek Mining Company entered into possession of said claims and began to mine and operate the same as a mining copartnership; that thereafter the said Klery Creek Mining Company operated said mining claims on said Klery Creek and vicinity, in the Noatuk-Kobuk Recording District, between the said 19th day of March, 1910, and the first day of September, 1911; that during said term and time said mining claims were operated at a loss to said mining copartnership of \$16,484.82, and that said indebtedness is due with legal interest to date, to Robinson-Magids & Company, or its assignee, for goods, wares and merchandise and for money advanced and paid out at the request of said Klery Creek Mining Company.

IV.

The Court finds that on or about the first day of

September, 1911, the said Klery Creek Mining Company executed several written leases upon several of the said mining claims above mentioned belonging to the said Klery Creek Mining Company, for the purpose of having said mining claims mined during the winter of 1911, under all of which leases certain stipulated royalties were reserved to be paid to the said mining copartnership

V.

The Court finds that theretofore and on or about the first day of September, 1911, the defendants Andy Garbin and Jack Lesamis, in violation of the terms and conditions of the said copartnership agreement, conveyed, without consideration, [61] to defendants George L. Stanley and Sam Sallo, all of their right, title and interest in the said Klery Creek Mining Company copartnership property, real and personal, and the Court finds that said conveyances were void as against the plaintiff and the creditors of said Klery Creek Mining Company, and that said defendants, Stanley and Sallo are trustees for defendants Garbin and Lesamis.

VI.

The Court finds that the said written instruments executed and delivered as above set forth were thereafter recorded in the office of the Noatuk-Kobuk Recording District, on the 29th day of March, 1910, and the said defendants George L. Stanley and Sam Sallo took and received the said transfers of title from the said defendants Andy Garbin and Jack Lesamis, with full knowledge and notice of the said copartnership and with full knowledge and notice of

the fact that the said Klery Creek Mining Company had outstanding indebtedness at said time of the sum of \$16,484.82, incurred in mining operations theretofore conducted.

VII.

The Court finds that all of said royalties due or collected from the placer claims above described and set forth belonged to the Klery Creek Mining Company.

VIII.

The Court finds that heretofore and on the 24th day of October, 1911, one Philip Murphy, claiming an assignment of the account of Robinson-Magids & Company, creditors of said Klery Creek Mining Company, began an action at law in the above-entitled court, for the collection of \$17,124.00 and interest, against the said Klery Creek Mining Company, and caused to be issued a writ of attachment against the mining property of said Klery Creek Mining Company; that the indebtedness of the said Klery Creek Mining Company to the said Philip Murphy, assignee of said Robinson-Magids & Company, should be paid from the first proceeds of the assets and property of said Klery Creek Mining Company, after the [62] expenses of this litigation is settled, and before any balance sum due the said defendants is paid, from the proceeds or assets of said mining copartnership.

IX.

The Court finds that owing to the acts and actions of the defendants, it is impossible for the plaintiff and said defendants to further act and conduct the mining copartnership in the management and workings of said mining copartnership property and min-

ing claims; that said defendants Stanley, Sallo, Garbin, Lesamis and Tyapay, are all insolvent and have no other property of value other than their interest in said copartnership property, and that the assets of the said Klery Creek Mining Company consists of said mining claims above described, and certain personal property incident thereto and upon said mining claims, and that the said Klery Creek Mining Company has no money or other property except the said placer claims and personal property therewith connected to pay its indebtedness.

X.

The Court finds that the total gold production of 1910 of said Klery Creek Mining Company was \$16,251.42, and that the total expense of the said Klery Creek Mining Company for 1910 was \$8,959.75, leaving a net profit of \$7,391.67, of which the said defendant Jack Lesamis received \$1,726.00; John Tyapay, \$2,000.00 and Andy Garbin, \$1,512.19, and the said Lesamis had a credit for 1911 of \$737.89, and the said John Tyapay had a credit of \$463.89, and the said Andy Garbin had a credit of \$951.70.

That the total expense for the year 1911 was \$26,271.70 and the total gold production for the year 1911 amounted to \$9,786.88, leaving an indebtedness due the Robinson-Magids & Company or its assignee, Philip Murphy, of \$16,484.82 on the first day of September, 1911, with legal interest to date, amounting to \$2,830.12; that the Court further finds that the defendants in the years 1911 and 1912, in order to prevent a forfeiture, did the annual assessment work on certain claims [63] mentioned in paragraph V

of the supplemental answer and cross-complaint of defendants Stanley and Sallo, of the total value of \$2,400.00, and that said amount is chargeable as indebtedness against the said Klery Creek Mining Company, and the defendants are entitled to be credited with the same.

XI.

The Court finds that the total indebtedness of said Klery Creek Mining Company, due to said Robinson-Magids & Company, or its assignee, Philip Murphy, with legal interest to date, amounts to \$19,314.94, and that each of the said partners would be indebted to the said Klery Creek Mining Company for the sum of \$4,828.73 less the credits above mentioned, and that the said defendant Lesamis is indebted to the said Klery Creek Mining Company in the sum of \$4,429.-21; that the said defendant Tyapay is indebted to the Klery Creek Mining Company in the sum of \$4,703.21; that the said defendant Garbin is indebted to the said Klery Creek Mining Company in the sum of \$4,215.40; that the plaintiff Greenberg is indebted to the Klery Creek Mining Company in the sum of \$5,967.10.

XII.

The Court finds that it was the intent and meaning of the parties in forming said copartnership that the balance payment of \$24,000 was to be paid from the net profits from the mining operations of the copartnership property, and that the defendants Jack Lesamis, Andy Garbin and John Tyapay have received on the said sum of \$24,000 the tital sum of \$5,238.19, leaving a balance due to said defendants

or their assigns from the net profits, the sum of \$18,761.81.

XIII.

The Court finds that the allegations contained in the answers of the defendants that said balance payment was due from the first gold-dust extracted and taken from the undivided one-quarter ($\frac{1}{4}$) interest in said mining property, is not supported by the evidence, and is untrue.

XIV.

The Court further finds that all allegations in the answers of the defendants and in their supplemental answer [64] and cross-complaint inconsistent with the above and foregoing findings are not supported by the evidence in the case and are untrue.

CONCLUSIONS OF LAW.

And from the obove and foregoing findings of fact, the Court now makes the following:

CONCLUSIONS OF LAW.

I.

That the plaintiff, Greenberg, is entitled to an accounting and the mining claims and personal property situated thereon, mentioned in the complaint, are liable for the debts of the copartnership; that the copartnership should be dissolved and the assets of the copartnership sold and from the proceeds the costs and expenses of this litigation should be paid, then the indebtedness of the copartnership after which the balance of the purchase price agreed to be paid by the plaintiff, Greenberg, should be paid, and the balance, if any, of said proceeds should be

equally divided between the plaintiff, Greenberg, and the defendants, Lesamis, Tyapay and Garbin, or their assigns.

II.

That the plaintiff, Greenberg, is entitled to a final decree of this Court dissolving the said copartnership and directing the sale of the assets thereof, and the application of the proceeds of said assets to the payment of the indebtedness of said copartnership, and the distribution of the same, as above provided.

Done in open court this 28 day of October, 1913.

CORNELIUS D. MURANE,

District Judge.

Service of foregoing findings and conclusions admitted by receipt of a copy this 24th day of Oct. 1913.

G. J. LOMEN,

Attys. for Defs. [65]

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Findings of Fact and Conclusions of Law. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 28, 1913. John Sundback, Clerk. By J. A. B., Deputy. J. F. Hobbes and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. Vol. 10, Orders and Judgments, p. 359, C. [66]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Decree.

This cause came on regularly to be heard before the Court without a jury, on the 15th day of September, 1913, and the trial thereof continued from day to day until the 19th day of September, 1913, the plaintiff appearing in person and by his attorneys, Messrs. J. F. Hobbes and William A. Gilmore, and the defendants appearing in person and by their attorney, G. J. Lomen, Esq., and witnesses on behalf of the plaintiff, and defendants having been sworn and testified, and documentary evidence and depositions on behalf of the parties hereto being read and introduced in evidence, and the Court having heard the arguments of counsel for the respective parties, and having taken the same under advisement, and having thereafter, on the 21st day of October, 1913, filed its written opinion herein, finding for the plaintiff and against the defendants, and having heretofore on the 28th day of October,

1913, made and filed its findings of fact and conclusions of law herein, and being now fully advised in the premises, and upon motion of attorneys for plaintiff, it is hereby,

ORDERED, ADJUDGED AND DECREED, that the plaintiff do have judgment as prayed for in his complaint herein, against the defendants and each of them; that the mining copartnership between plaintiff and defendants named the Klery Creek Mining Company be, and the same is hereby dissolved; that the plaintiff be, and he is hereby granted an accounting between the plaintiff and defendants of all and every matter [67] and thing arising under and by virtue of the mining copartnership known as the Klery Creek Mining Company, in accordance with the findings of the Court, heretofore made, filed and entered; and it is further ORDERED, ADJUDGED AND DECREED, that all the assets of the said Klery Creek Mining Company consist of mining claims and personal property situated thereon, and therewith connected, hereinafter named; that under and by virtue of said accounting that said Klery Creek Mining Company is indebted to the Robinson-Magids & Company, or to Philip Murphy, its assignee, in the sum of \$16,-484.82, with legal interest from September 1st, 1911, to date, amounting to \$2,830.12, amounting in principal and interest in all, to the sum of \$19,314.94; and that of said indebtedness the defendant Jack Lesamis owes to the Klery Creek Mining Company the sum of \$4,429.21; that the said defendant John Tyapay is indebted to the said Klery Creek Mining

Company in the sum of \$4,703.21; and the said defendant Andy Garbin is indebted to the said Klery Creek Mining Company in the sum of \$4,215.40, and the plaintiff H. Greenberg is indebted to the said Klery Creek Mining Company in the sum of \$5,967.10; it is further ORDERED, ADJUDGED AND DECREED that the plaintiff, H. Greenberg, is entitled to have the assets of said copartnership sold and the proceeds applied to the payment of said indebtedness, said assets of said copartnership being the mining claims described in plaintiff's complaint, and in the findings of fact heretofore made and filed by the Court, together with the personal property thereon situated, said mining claims all situated and located in the Noatuk-Kobuk Mining Precinct, District of Alaska, to wit:

Discovery Claim, One Above Discovery, Two Above Discovery, Six Below Discovery, Fraction between Two and Three Above Discovery, Association Fraction between Discovery and Starr, California Association, L. L. Klery Creek, opposite Discovery, Butte Association, R. L. Klery Creek opposite Discovery, Oregon Association (Bench and Creek), adjoining upper and Starr, and lower end of 1 and 2 Above Discovery, Bench [68] Seven, opposite Creek Claim Seven Below Gold Hill Association R. L. opposite 1, 2, 3 and 4 Creek claims. All the foregoing claims being situate on Klery Creek, or its benches; also Honey Claims, One and Two, between Klery and Bear Creeks, North Pole Association L. L. adjoining claims last-above described, One and Two Above Discovery on Bear Creek, Goldfield As-

sociation opposite 1 and 2 Above and one Below L. L. Bear Creek, Rich Association on Bear Creek, and adjoining 2 Above Central Association, adjoining No. 1 Below on Central Creek, Discovery on Central Creek, One Above on Central Creek, One Below on Central Creek, Fraction (Garbin) on Central Creek, Discovery Claim on Jack Creek, a tributary of Klery; all interest of said first party in all mining claims owned in whole or in part in Rocky Creek in said mining and recording district.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendants, George Stanley and Sam Sallo are the trustees for the defendants, Andy Garbin and Jack Lesamis, respectively, and that said defendants, Stanley and Sallo, by the conveyances made to them, took and now hold the legal title to the property described in said conveyances in trust for said defendants, Andy Garbin and Jack Lesamis, and subject to the said indebtedness of the said Klery Creek Mining Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the United States Marshal for the District of Alaska, Second Division, sell the whole of said assets, both personal and real above described, under order and execution of the Court in this action in the manner provided by law, and pay the proceeds of said sale to the clerk of the above-entitled court and that said clerk pay and distribute the said proceeds so received by him in the following manner:

1. The plaintiff's costs and expenses in this litigation.

2. The said indebtedness of the Klery Creek Mining Company to Robinson-Magids & Company or Philip Murphy, as assignee. [69]

3. The balance of said proceeds, if any, to the defendants or their assigns, to the amount of \$18,-761.81.

4. The balance of said proceeds, if any, still remaining, to be distributed equally between the plaintiff and the defendants, Andy Garbin, Jack Lesamis, John Tyapay, or their assigns.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff do have judgment and execution against the defendants and each of them, for his costs and disbursements in this action, taxed at the sum of \$141.95. dollars.

Done in open court this 28 day of October, 1913.

CORNELIUS D. MURANE,
District Judge.

Service of foregoing decree admitted by receipt of copy this 24th day of Oct., 1913.

G. J. LOMEN,
Of Attys. for Defs.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis, Defendant. Decree. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 28, 1913. John Sundback, Clerk. By J. A. B., Deputy. J. F. Hobbes and William A. Gilmore,

Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. J. D. 2, p. 218. Vol. 10, Orders and Judgments, p. 368. C. [70]

Mandate.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to
the Honorable the Judges of the Dis-
[Seal] trict Court of the United States for the
District of Alaska, Second Division,
GREETING:

WHEREAS, lately in the District Court of the United States for the District of Alaska, Second Division, before you, or some of you, in a cause between H. Greenberg, Plaintiff, and Jack Lesamis, John Tyapay, Andy Garbin, George Stanley and Sam Sallo, Defendants, No. 2349, a Decree was duly filed on the 28th day of October, A. D. 1913, in favor of the plaintiff and against the defendant; which said Decree is of record in the said cause in the office of the clerk of the said District Court (to which record reference is hereby made and the same is hereby expressly made a part hereof), as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the Act of Congress in such case made and provided, fully and at large appears;

AND WHEREAS, on the second day of March in the year of our Lord one thousand nine hundred and

fifteen, the said cause came on to be heard before the said Circuit Court of Appeals, on the said Transcript of the Record and was duly submitted:

ON CONSIDERATION WHEREOF, it is now here ordered, adjudged and decreed by this Court that Finding No. II of the said District Court be changed to conform to the opinion of this Court, and that the Decree of the said District Court be modified accordingly, and that as so modified the said Decree be, and hereby is affirmed, neither party to recover costs on the appeal. (August 9, 1915.)

YOU, THEREFORE, ARE HEREBY COMMANDED

That such execution and further proceedings be had in the said cause in accordance with the opinion and decree of this Court and as according to right and justice and the laws of the United States ought to be had, the said decree of the said District Court notwithstanding. [71]

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the tenth day of September, in the year of our Lord one thousand nine hundred and fifteen, and of the Independence of the United States of America the one hundred and fortieth.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: #2349. No. 2514. United States
Circuit Court of Appeals for the Ninth Circuit.

Jack Lesamis et al. vs. H. Greenberg. Mandate. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Feb. 5, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. Vol. 11, page 210, Orders and Judgments. C. [72]

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

**Notice of Hearing Motion and Petition for Amended
Findings, etc.**

To Wm. A. Gilmore and J. F. Hobbes, Attorneys for
Plaintiff.

TAKE NOTICE that on Saturday, the 27th day of May, 1916, at 11 o'clock A. M., or as soon thereafter as counsel can be heard, at the courthouse in the city of Nome, Territory of Alaska, the defendants will bring on for hearing the motion and petition hereto annexed.

That said motion is based upon the petition, the opinion and mandate of the Circuit Court of Ap-

peals, and upon the records and files of said court in said action.

O. D. COCHRAN,
G. J. LOMEN,
Attorneys for Defendants. [73]

*In the District Court for the Territory of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Motion for Amended Findings, etc.

Now come the defendants above-named and upon the petition hereto annexed, the opinion and mandate of the Circuit Court of Appeals and the records and files herein, move the court for amended findings in accordance with the opinion and mandate of said Circuit Court of Appeals, and that the judgment herein be amended accordingly and as prayed for in said petition, and for an order of said court vacating and setting aside the sale on execution of the premises described in the judgment and that the order confirming said sale be vacated and set aside.

O. D. COCHRAN,
G. J. LOMEN,
Attorneys for Defendants. [74]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Petition for Amended Findings, etc.

Now come the defendants above-named and petition and show to the Court:

I.

That such proceedings were had in the above-entitled action that a decree was, on the 28th day of October, 1913, entered by said Court dissolving the partnership known as the Klery Creek Mining Company theretofore existing between said plaintiff H. Greenberg and the defendants Jack Lesamis, John Tyapay and Andy Garbin, and a partial accounting of said partnership matters was by said decree made as will more fully appear by reference to the findings and judgment on file and of record in said court, reference to which is hereby made.

II.

That such proceedings were thereafter had that on the 10th day of August, 1914, the property of said partnership consisting of the mining claims men-

tioned in the complaint and certain personal property was sold by the United States Marshal under a pretended writ of execution issued in said action; that said mining claims were at said sale bid in by said plaintiff H. Greenberg for the sum of Three Thousand (\$3,000) Dollars, but that said money so bid was never [75] paid except the sum of \$107.07 thereof, being the costs of sale, and that no part of said money so bid was ever delivered by said marshal to the clerk of said court as ordered and directed by the judgment of said court above referred to. That said plaintiff is still the holder of the marshal's certificate of sale of said premises and that no marshal's deed has yet been made or delivered of said premises, as your petitioners are informed and believe.

III.

That the defendants above-named duly objected to the confirmation of said sale and thereafter took an appeal from said decree and from the order confirming said sale, and such proceedings were thereafter had on said appeal in the Circuit Court of Appeals in and for the Ninth Circuit.

IV.

That the findings and judgment or decree of said District Court were, by the opinion of said Circuit Court of Appeals made and entered August 9th, 1915, in part reversed and modified as more fully appears in and by said opinion reported in 225 Federal Reporter, page 449, reference to which opinion is hereby made.

V.

That thereafter on the 10th day of September, 1915, the mandate of said Circuit Court of Appeals was duly issued and on the 5th day of February, 1916, was duly filed in the office of the clerk of said District Court. A copy of said mandate is hereto attached, marked Exhibit "B."

VI.

That in and by said opinion and mandate the said District Court was ordered and directed to change and modify its findings and judgment herein to conform to said opinion and mandate, and that such execution and further proceedings be had in said cause in accordance with said opinion and mandate and as according to right and justice and the laws of the United States ought to be had. [76]

VII.

That in the execution and further proceedings to be had in said cause, accordingly, it is necessary, and according to right and justice, that the several findings of said court should be made consistent with each other and with finding No. 11 directed to be and when amended; that palpable mistakes in the matter of computation by either court should be corrected; that said judgment appealed from, so amended and corrected, should be made final upon all material issues presented, according to the facts found, and according to such new facts as the Court, upon a hearing of this petition, shall find have arisen since the entry of said judgment appealed from, and which facts are material in the execution and further proceedings in said cause directed to be had.

That mistakes of omission and commission in the matter of said accounting and computation were made by the trial court and by said Circuit Court of Appeals, to the grievous injury of these defendants unless the same be now corrected and which mistakes appear by a mere inspection of the findings, judgment and opinion themselves, when taken by their four corners, and which these defendants, on the hearing of this petition, will be able to point out, and which appear in the statement of account hereto attached and made a part hereof, marked Exhibit "A."

VIII.

That the accounting made by said District Court was incomplete, in that it did not show the status of the account of each partner with reference to said partnership nor the status of the account of each partner with reference to his copartners, but only with reference to the indebtedness of said parties to the creditor, Robinson-Magids & Company; and that said judgment was in part final and in part interlocutory.

That your petitioners present herewith a statement of account (said Exhibit "A"), showing, first, how the account of the Klery Creek Mining Co. stands with reference to strangers. Secondly, how the account of each partner [77] stands with reference to said firm. And, third, how the account of each partner stands with reference to his copartners, said statement of account being based upon and wholly deduced from the findings of fact of the said District Court as modified on appeal herein.

WHEREFORE your petitioners pray that the findings of fact and judgment herein may be amended and modified as directed in said mandate, and as explained and indicated by said statement of account, and that the order confirming the sale on execution above referred to be vacated and said sale set aside, that a final decree be entered, and for such other and further relief as to the Court shall seem just and proper in the premises.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendants.

United States of America,
Territory of Alaska,—ss.

G. J. Lomen, being duly sworn, on oath deposes and says: That he is one of the attorneys for the defendants herein; that he has read the foregoing petition, knows the contents thereof and the same is true as he verily believes; that he makes this verification on behalf of said defendants because said defendants, and each of them, are more than one hundred miles from Nome, the place of trial.

G. J. LOMEN.

Subscribed and sworn to before me this 16th day of May, 1916.

[Seal]

D. B. CHASE,

Notary Public for the Territory of Alaska, Residing
at Nome.

(My commission expires May 12th, 1917.) [78]

Exhibit "A"—Statement of Account.**JOURNAL.****KLERY CREEK MINING CO.**

1910. (Ledger)

(Folio)

1	H. Greenberg.....	\$16,351.42	
1	To cleanup, 1910.....		\$16,351.42
2	Expense	8,959.75	
2	To Robinson-Magids Co.....		8,959.75

This represents the total expense of operations in 1910 of the Klery Creek Mining Co.; for adjustment of accounts Robinson-Magids & Co., are used as representing all creditors.

2	Robinson-Magids & Co., & creditors..	8,959.75	
1	To H. Greenberg		8,959.75

This was to pay the above item of expense of the Klery Creek Mining Co., and show that Greenberg paid it out of the 1910 cleanup of \$16,351.42.

3	Jack Lesamis.....	1,726.00	
3	John Tyapay	2,000.00	
4	Andy Garbin	1,512.19	
1	To H. Greenberg.....		5,238.19

This represents what was a part of the net proceeds but Greenberg, having all the money belonging to the company, paid out the above to defendants and took credit on his \$24,000 account. This was the three defendants own money and is made to appear on the books of the company for the purpose only of showing how Greenberg disposed of the \$16,351.42 and in the following item we again

charge this back to Greenberg as he owes it to the Klery Creek Mining Company. [79]

1910. (Ledger)

(Folio)

1	H. Greenberg	\$ 5,238.19	
3	To Jack Lesamis		\$ 1,726.00
3	To John Tyapay.....		2,000.00
4	To Andy Garbin		1,512.19

This represents the amount Greenberg took of the net proceeds to pay on his \$24,000 personal account which offsets the credit Greenberg received on these books and makes him owing the Klery Creek Mining Company this amount.

2	Robinson-Magids & Co.....	2,153.48	
1	To H. Greenberg.....		2,153.48

This represents the balance of the net proceeds and should have been paid to Jack Lesamis, John Tyapay and Andy Garbin, as it was their own money that Greenberg held, but Greenberg paid the same to Robinson-Magids & Co., to be credited on their books to the defendants as follows:

Jack Lesamis.....	\$737.89
John Tyapay	463.89
Andy Garbin	951.70

making the above total.

1	H. Greenberg	4,087.85	
3	To Jack Lesamis.....		1,362.62
3	To John Tyapay.....		1,362.62
4	To Andy Garbin.....		1,362.61

This represents what was due Greenberg of the 1910 cleanup of \$16,351.42 to pay on his \$24,000 personal debt being one quarter gross and due defendants. [80]

1910. (Ledger)

(Folio)

1	H. Greenberg	\$2,293.93	
3	To Jack Lesamis.....		746.64
3	To John Tyapay.....		746.64
4	To Andy Garbin		746.65

This represents Greenberg's one-fourth gross of the 1910 expenses as advanced by the defendants in the payment made to Robinson-Magids & Co. (creditors) of \$8,959.75.

1911.

1911.

2	Expenses	\$28,425.18	
2	To Robinson-Magids & Co.....		\$28,425.18

This represents the true amount of the total expense of operation in 1911 of the Klery Creek Mining Co. The Court, in finding the total expense evidently overlooked the fact that the credit of \$2,153.48, the amount paid by Greenberg to the Robinson-Magids Co., for the personal credit of the defendants, had been deducted from this amount by Robinson-Magids Co. by crediting Klery Creek Mining Co. with it, leaving \$26,271.70 the amount of total expense for 1911 as found by the Court.

1	H. Greenberg	9,786.88	
1	To Cleanup		9,786.88
2	Robinson-Magids & Co.....	9,786.88	
1	To H. Greenberg.....		9,786.88

This represents the 1911 cleanup
paid by Greenberg to apply on account.

[81]

1910. (Ledger)

(Folio)

1	Cleanups	\$2,153.48	
3	To Jack Lesamis		737.89
3	John Tyapay		463.89
4	Andy Garbin		951.70

This represents the 1910 credits
of defendants which Greenberg de-
posited with Robinson-Magids & Co.
for their personal accounts but Robin-
son-Magids Co. credited the \$2,153.48
to the Klery Creek Mining Co. ac-
count and not to the defendants, there-
fore this being their personal money
they are entitled to credit on the
books of the Klery Creek Mining Co.
for the total amount.

1	H. Greenberg	2,446.72	
3	To Jack Lesamis		815.57
3	John Tyapay		815.57
4	Andy Garbin		815.58

This represents what was due Green-
berg out of the 1911 cleanup of
\$9786.88 to pay on his \$24,000 per-
sonal account being one-quarter of the
gross and due defendants.

1	H. Greenberg	6,567.93	
3	Jack Lesamis	6,567.93	
3	John Tyapay	6,567.92	
4	Andy Garbin	6,567.92	
2	To expenses		26,271.70

This represents a division of the balance of total expense (as explained) of the Klery Creek Mining Co. at the close of the season in 1911 amongst the partners so as to ascertain the amount due by each partner to the Klery Creek Mining Co. [82]

1910. (Ledger)

(Folio)

1	Cleanups	\$7,340.16	
3	To Jack Lesamis		\$2,446.72
3	John Tyapay		2,446.72
4	Andy Garbin		2,446.72

This represents a division of the balance of the 1911 cleanup (after Greenberg's one-quarter gross is applied on his \$24,000 personal debt due defendants and is charged against him in the item of \$2446.72 divided into equal credits for each partner of \$815.57) so as to ascertain the amount due by each partner to the Klery Creek Mining Co.

1	Cleanups	11,113.23	
2	To expense		11,113.23
1913.		1913.	
1	H. Greenberg	3,539.75	
3	Jack Lesamis	75.79	
3	John Tyapay	121.10	
4	Andy Garbin	40.44	
2	To interest		3,777.08

This represents the amount of interest each partner owes the Klery Creek Mining Co. from Sept. 1, 1911, to October 24, 1913. Date of the findings.

2	Interest	2,830.12	
2	To Robinson-Magids Co.....		2,830.12

This represents the amount of interest due Robinson-Magids Co. from Sept. 1, 1911, to Oct. 24, 1913, making the total amount of indebtedness on the books of the Klery Creek Mining Co., the same as the judgment of the Court, \$19,314.94. [83]

LEDGER.

KLERY CREEK MINING CO.

CLEANUPS.

(Cr. represents gold-dust taken out.)

(Debit represents adjustments and this account used in place of Profit and Loss.)

1910.		1910.	
Re-settlement (J.4)	\$2,153.48	Gold-dust 1910 (J.1)	16,351.42
1911.		1911.	
Re-settlement (J.5)	7,340.16	Gold-dust 1911 (J.3)	9,786.88
" expense (J.5)	11,113.23		
Balance	5,531.43		
	<hr/>		<hr/>
	\$26,138.30		\$26,138.30

1911.

Sept. 1. Balance ...\$5,531.43

H. GREENBERG.

1910.		1910.	
Cleanup 1910 (J.1)	16,351.42	Robinson-Magids &	
Jack Lesamis, J. Ty-		Co. (J.1)	8,959.75
pay & A. Gar-		Jack Lesamis (J.1)	
bin (J.2)	5,238.19		1726.00
(do) (J.2)	4,087.85	John Tyapay (J.1)	
(do) (J.3)	2,239.93		2000.00

		Andy Garbin (J.1)	
		1512.19	5,238.19
		Robinson-Magids &	
		Co. (J.2)	2,153.48
		Balance due Kler.	
		Cr. M. Co. end of	
		1910 season	11,565.97
		<hr/>	<hr/>
		\$27,917.39	\$27,917.39
1911. Balance May 1,			
1911		11,565.97	
To Cleanups (J.3)	9,786.88	Robinson-Magids &	
J. Lesamis, J. Tya-		Co. (J.3)	9,786.88
pay & Garbin (J.4)	2,446.72	Balance due Klery	
$\frac{1}{4}$ Bal. of debts		Creek M. Co. end	
1911, (J.4)	6,567.93	of 1911 season,	20,580.62
	<hr/>		<hr/>
	\$30,367.50		\$30,367.50

1911.

Sept. 1, Balance Due 20,580.62

1913.

Oct. 24. Interest to

date (J.5) 3,539.75

Amount due Klery Creek Mining Co., October 24, 1913,
\$24,120.37 [84]

EXPENSE.

(Debits represent total indebtedness.)

(Credits represent adjustments and charges.)

1910.

Robinson-Magids &		Re-Settlement (Ex-	
Co. (J.1)	\$8,959.75	pense 1911) (J.4)	26,271.70

1911.

Robinson-Magids &		(Exp. 1910, +2153.48,	
Co. (J.3)	28,425.18	(credit, (J.5)	11,113.23
	<hr/>		<hr/>
	\$37,384.93		\$37,384.93

ROBINSON-MAGIDS CO.

1910.		1910.	
To H. Greenberg			
(J.1)	8,959.75	By expense (J.1)	8,959.75
To H. Greenberg		1911.	
(J.2)	2,153.48	By Expense (J.3)	28,425.18
To H. Greenberg			
(J.3)	9,786.88		
Balance Due . . .	16,484.82		
	<hr/>		<hr/>
	\$37,384.93		\$37,384.93

1911.

Sept. 1. Balance Due 16,484.82

1913.

Oct. 24. Interest to
date, (J.5) 2,830.12

Amount due Robin-
son-Magids Co.,

Oct. 24, 1913 \$19,314.94

INTEREST.

1913.

Oct. 24. (J.5) 2,830.12 Oct. 24. (J.5) 3,777.08
[85]

JACK LESAMIS.

1910.		1910.	
To cash Greenberg		By H. Greenberg (J.2)	1,726.00
(J.1)	1,726.00	By “ (J.2)	1,362.62
Balance	2,109.26	By “ (J.3)	746.64
	<hr/>		<hr/>
	3,835.26		3,835.26

1911.

$\frac{1}{4}$ Bal. of debt, 1911
(J.4) 6,567.93

1911.

Balance due 2,109.26

“ from 1910 net
proceeds (J.4) 737.89

By H. Greenberg
(J.4) 815.57

By 1911 cleanup (J.5) 2,446.72

Balance 458.49

6,567.93

6,557.93

1911.

Sept. 1. Balance Due 458.49

1913.

Oct. 24. Interest to date
(J.5) 75.79

Amount due Klery

Creek Mining Co.

Oct. 24, '13..... 534.28

JOHN TYAPAY.

1910.

To Cash H. Greenberg
(J.1) 2,000.00

1910.

By H. Greenberg
(J.2) 2,000.00

By H. Greenberg
(J.2) 1,362.62

Balance 2,109.26 By H. Greenberg
(J.3) 746.26

\$3,109.26

\$3,109.26

1911.

$\frac{1}{4}$ Bal. of debts, 1911,
(J.4) 6,567.92

Balance due 2,109.26

“ from 1910 net
proceeds (J.4) 463.89

By H. Greenberg
(J.4) 815.57

By 1911 cleanup (J.5) 2,446.72

Balance 732.48

\$6,567.92

\$6,567.92

1911.

Sept. 1. Balance Due 732.48

1913.

Oct. 24. Interest to date

(J.5) 121.10

Amount due Klery

Creek Mining Co.

October 24, 1913..\$853.58

[86]

ANDY GARBIN.

To cash H. Greenberg

(J.1) 1,512.19

By H. Greenberg

(J.2) 1,512.19

By H. Greenberg

(J.2) 1,362.61

By H. Greenberg

Balance 2,109.26

(J.3) 746.65

\$3,621.45

\$3,621.45

1911. $\frac{1}{4}$ Bal. of debts,

1911 (J.4) 6,567.92

Balance Due 2,109.26

“ from 1910 net

profits (J.4) 951.70

By H. Greenberg

(J.4) 815.58

By cleanup 1911

(J.5) 2,446.72

Balance 244.66

\$6,567.92

\$6,567.92

1911.

Sept. 1. Balance due 244.66

1913.

Oct. 24. Interest to date

(J.5) 40.44

Amount Due Klery

Creek Mining Co.

Oct. 24, 1913.... \$285.10

MEMORANDUM LEDGER.

H. GREENBERG.

1910. Balance on $\frac{1}{4}$	1910.
interest \$24,000.00	By cash,
	Lesamis . . . 1726.00
	Tyapay . . . 2000.00
	Garbin . . . 1512.19
	<hr/> 5,238.19
	1911.
	By amts. bal. $\frac{1}{4}$ gross
	not paid:
	Lesamis . . . 452.19
	Tyapay . . . 178.19
	Garbin . . . 666.00
	(now due) . . . 1,296.38

The amount \$1296.38 is arrived at by deducting the amount overpaid in 1910 which is the difference between \$5238.19 and \$4087.85 or \$1150.34 to be deducted from $\frac{1}{4}$ gross of 1911 \$2446.72 leaves \$1296.38.

Balance contingently due defendants, \$17,465.43.

(\$2400.00 due Stanley & Sallo—see findings.)

On final adjustment the \$6478.39 (due the company from the partners in excess and over and above the debts of the Klery Creek Mining Co.) should be divided equally, but Greenberg's one-quarter would apply on his \$24,000 debt, therefore the defendants are entitled to all of the surplus and as it is far in excess of what they owe the company, Greenberg should pay the Robinson-Magids Co. "Subrogation and Contribution." [87]

SUMMARY OF LEDGER ACCOUNTS FOR 1910.

Cleanups	\$16,351.42
H. Greenberg	\$11,565.97
Expense	8,959.75
Robinson-Magids Co.	2,153.48
Jack Lesamis	2,109.26
John Tyapay	2,109.26
Andy Garbin	2,109.26
	<hr/>
	\$22,679.20
	<hr/>
	\$22,679.20

SUMMARY OF LEDGER ACCOUNTS FOR 1911.

Cleanups (fiction)	5,531.43	
H. Greenberg	\$20,580.62	
Robinson-Magids & Co.....		16,484.82
Jack Lesamis	458.49	
John Tyapay	732.48	
Andy Garbin	244.66	
	<hr/>	<hr/>
	\$22,016.25	\$22,016.25

SUMMARY OF LEDGER ACCOUNTS, OCT. 24, 1913.

Cleanups (profit and loss a/c.)	5,531.43	
H. Greenberg	24,120.37	
Robinson-Magids & Co.....		19,314.94
Interest (Difference in Int. a/cs.)..		946.96
Jack Lesamis	534.28	
John Tyapay	853.58	
Andy Garbin	285.10	
	<hr/>	<hr/>
	\$25,793.33	\$25,793.33

[88]

Exhibit "B"—Mandate.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to
the Honorable the Judges of the
(Court Seal) District Court of the United States
for the District of Alaska, Second
Division, GREETING:

WHEREAS, lately in the District Court of the
United States for the District of Alaska, Second
Division, before you, or some of you, in a cause be-
tween H. Greenberg, plaintiff, and Jack Lesamis,
John Tyapay, Andy Garbin, George Stanley and
Sam Sallo, defendants, No. 2349, a decree was duly

filed on the 28th day of October, A. D. 1913, in favor of the plaintiff and against the defendant; which said decree is of record in the said cause in the office of the clerk of the said District Court (to which record reference is hereby made and the same is hereby expressly made a part hereof), as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the Act of Congress in such cases made and provided, fully and at large appears:

AND WHEREAS, on the second day of March, in the year of our Lord one thousand nine hundred and fifteen, the said cause came on to be heard before the said Circuit Court of Appeals, on the said Transcript of the Record and was duly submitted;

ON CONSIDERATION WHEREOF, it is now here ordered, adjudged and decreed by this Court, that Finding No. 11 of the said District Court be changed to conform to the opinion of this Court, and that the Decree of the said District Court be modified accordingly, and that as so modified the said decree be, and hereby is, affirmed, neither party to recover costs on the appeal.

(August 9, 1915.)

YOU, THEREFORE, ARE HEREBY COMMANDED, That such execution and further proceedings be had in the said cause in accordance with the [89] Opinion and Decree of this Court and as according to right and justice and the laws of the

United States ought to be had, the said decree of the said District Court notwithstanding.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the tenth day of September, in the year of our Lord one thousand nine hundred and fifteen, and of the independence of the United States of America the one hundred and fortieth.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk. [90]

Service of the within and foregoing petition hereby accepted this —— day of ——, 1916.

Service of the within notice, motion and petition is hereby admitted at Nome, Alaska, this 20th day of May, 1916.

J. F. HOBBS,
Of Attys. for Plff.

[Endorsed]: #2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis, John Tyapay, Andy Garbin, George Stanley and Sam Sallo, Defendants. Notice, Motion and Petition. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 20, 1916. G. A. Adams, Clerk. By —————, Deputy. L. O. D. Cochran, G. J. Lomen, Attorneys for defendants.

[91]

*In the District Court for the District of Alaska,
Second Division.*

TERM MINUTES, General 1916 Term, Beginning
January 29, 1916.

Saturday, May 27, 1916, at 11 A. M.

Court convened pursuant to adjournment,—Honorable J. R. TUCKER, District Judge, presiding.

Upon the convening of court the following proceedings were had:

Minute Order of May 27, 1916.

2349.

H. GREENBERG,

vs.

JACK LESAMIS et al.

Hearing on motion of defendants to amend findings, and amend judgment accordingly, had.

G. J. Lomen, counsel for defendants, submitted oral argument.

At 12 o'clock court adjourned until 2 P. M.

2 P. M.

Argument of counsel Lomen continued.

J. F. Hobbes, counsel for plaintiff, entered appearance of plaintiff and made objection to the jurisdiction of the Court to modify the decree in this case in any way except as directed by the mandate.

Amended findings of fact and conclusions of law, together with amended decree, were submitted to the Court for consideration.

Memorandum brief on mandate also submitted.

Closing argument by counsel Lomen.

Matter submitted, counsel to furnish briefs.

At 5 P. M. Court adjourned until 2 P. M. Monday,
May 29th, 1916. [92]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GAR-
BIN, GEORGE STANLEY, and SAM SALO.
Defendants.

Amended Findings of Fact and Conclusions of Law.

This cause being an equitable action, having come on regularly to be heard before the Court on the 15th day of September, 1913, and the trial thereof continuing thereafter from day to day to the 19th day of September, 1915, the plaintiff appearing in person and by his attorneys, Messrs. J. F. Hobbes and William A. Gilmore; and the defendants appearing in person and by their attorney, G. J. Lomen, Esq., and witnesses on behalf of the plaintiff and defendants having been sworn and testified, and documentary evidence and depositions on behalf of the parties hereto having been read and introduced in evidence, and the Court having heard the arguments of counsel for the respective parties and having thereafter and on the 21st day of October, 1913, ren-

dered and filed its written opinion herein, and being now fully advised in the premises, makes the following findings of fact and conclusions of law, to wit:

FINDINGS OF FACT.

I.

The Court finds that heretofore and on the 19th day of March, 1910, and for a long time prior thereto, the defendants, Jack Lesamis, John Tyapay and Andy Garbin, were the owners and in the possession of certain placer mining claims situated in the Noatak-Kobuk Mining and Recording District, District of Alaska, and that the legal title to said placer mining claims stood in the names of said defendants by virtue of certain placer locations by them made in said mining district; that on the said 19th day of March, 1910, the said defendants, Jack Lesamis, John Tyapay and Andy Garbin, entered into certain written instruments whereby and wherein they agreed with the plaintiff to form a copartnership to work and mine said mining claims, and to give and convey to the plaintiff [93] an undivided one-quarter ($\frac{1}{4}$) interest in all said placer mining claims, lode claims and water rights then owned, acquired or to be acquired by said defendants in consideration of the plaintiff furnishing them with provisions from time to time from the said 19th day of March, 1910, to July, 1910, and agreed to pay the defendants the sum of six thousand dollars (\$6,000.00) in cash and thereafter the further additional sum of twenty-four thousand (\$24,000.00) from one-fourth of the gross output of said mining operations to be thereafter conducted and had upon said mining claims; that the

said agreement between the parties, plaintiff and said defendants, was reduced to writing and incorporated in the following two written instruments, which said instruments were executed, witnessed and delivered between the parties, to wit:

“Agreement:

Klery Creek, March 19th, 1910.

Know all men by these presents That we the undersigned John Tyapay, Andy Garbin and Jack Lesamis of the Noatak-Kobuk Recording District, District of Alaska, and H. Greenberg of Nome, Ala., enter into this agreement, that for the sum of one dollar lawful money of the United States in hand paid and other valuable services, for same services H. Greenberg is, and shall be a full fledged partner with the above mentioned parties & have one quarter undivided interest in all claims, lodes, water rights acquired or to be acquired and owned by the above-mentioned parties. It is further agreed that H. Greenberg is to furnish the above-mentioned parties with Provisions from time to time up till July, 1910.

ANDY GARBIN. [Seal]

JACK LESAMIS. [Seal]

JOHN TYAPAY. [Seal]

H. GREENBERG. [Seal]

Witnesseth:

SAM MAGIDS,

HERMAN BERNHARDT.”

“This indenture made the 19th day of March in the year of our Lord One thousand nine hundred and ten between the undersigned Andy Garbin, Jack Lesamis and John Tyapay of the Noatak-Kobuk re-

ording District, of the District of Alaska, parties of the first part, and H. Greenberg of Nome, Alaska, party of the second part witness, That the said parties of the first part, for and in consideration of the sum of Thirty Thousand dollars (\$30,000.00).

Six thousand dollars (\$6,000.00) in lawful money of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the balance of twenty-four thousand to be paid of the first money taken out of the ground hath, granted, bargained, sold, remised, released, and forever quitclaimed and by these presents doth grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part, his heirs and assigns one-quarter ($\frac{1}{4}$) undivided of all mining claims located, surveyed, *ecorded* and held by said parties of the first part situated in Noatak-Kobuk mining district, *district* of Alaska, together with all the dips, spurs and angles and also the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had or enjoyed; and also all and singular the tenements, hereditaments and appurtenances, thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of in or to the said premises and every part or parcel thereof, with the appurtenances. [94]

To have and to hold, all and singular, *he* said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever warranting and defending the same against the claims of all persons, save and except the United States.

ANDY GARBIN. [Seal]

JACK LESAMIS. [Seal]

JOHN TYAPAY. [Seal]

Witnesseth:

SAM MAGIDS.

HERMAN BERNHARDT."

II.

The Court finds that thereafter and at all times since said 19th day of March, 1910, plaintiff has fulfilled and carried out the terms, covenants and conditions on his part to be done, made, kept and performed and did furnish the defendants with the provisions mentioned in said written instrument and did pay to the defendants the sum of \$6,000.00 in lawful money of the United States, and the said defendants thereupon and in pursuance of the terms of said written instrument, entered into the mining copartnership known, named and called the Klery Creek Mining Company, and thereupon began mining operations upon said placer claims heretofore referred to and hereinafter named and set forth.

III.

The Court finds that at the time said instruments were executed and delivered and at the time said mining copartnership was formed, the said defendants, Jack Lesamis, John Tyapay, and Andy Garbin,

cording District, of the District of Alaska, parties of the first part, and H. Greenberg of Nome, Alaska, party of the second part witness, That the said parties of the first part, for and in consideration of the sum of Thirty Thousand dollars (\$30,000.00).

Six thousand dollars (\$6,000.00) in lawful money of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the balance of twenty-four thousand to be paid of the first money taken out of the ground hath, granted, bargained, sold, remised, released, and forever quitclaimed and by these presents doth grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part, his heirs and assigns one-quarter ($\frac{1}{4}$) undivided of all mining claims located, surveyed, *ecorded* and held by said parties of the first part situated in Noatak-Kobuk mining district, *district* of Alaska, together with all the dips, spurs and angles and also the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had or enjoyed; and also all and singular the tenements, hereditaments and appurtenances, thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of in or to the said premises and every part or parcel thereof, with the appurtenances. [94]

To have and to hold, all and singular, *he* said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever warranting and defending the same against the claims of all persons, save and except the United States.

ANDY GARBIN. [Seal]

JACK LESAMIS. [Seal]

JOHN TYAPAY. [Seal]

Witnesseth:

SAM MAGIDS.

HERMAN BERNHARDT."

II.

The Court finds that thereafter and at all times since said 19th day of March, 1910, plaintiff has fulfilled and carried out the terms, covenants and conditions on his part to be done, made, kept and performed and did furnish the defendants with the provisions mentioned in said written instrument and did pay to the defendants the sum of \$6,000.00 in lawful money of the United States, and the said defendants thereupon and in pursuance of the terms of said written instrument, entered into the mining copartnership known, named and called the Klery Creek Mining Company, and thereupon began mining operations upon said placer claims heretofore referred to and hereinafter named and set forth.

III.

The Court finds that at the time said instruments were executed and delivered and at the time said mining copartnership was formed, the said defendants, Jack Lesamis, John Tyapay, and Andy Garbin,

were the owners and in the possession of the following placer mining claims, to wit:

Discovery Claim; One Above Discovery, Two Above Discovery, Six Below Discovery, Fraction between Two and Three Above Discovery, Association Fraction between Discovery and Starr, California Association, L. L. Klery Creek, opposite Discovery, Butte Association, R. L. Klery Creek, opposite Discovery, Oregon Associated (Bench and Creek) adjoining upper end Starr, and lower end of 1 and 2 Above Discovery, Bench Seven, opposite Creek Claim Seven Below Gold Hill Association, R. L. opposite 1, 2, 3 and 4 Creek Claims, all the foregoing claims being situated on Klery Creek, or its Benches; also Honey Claims One and Two, between Klery and Bear Creeks, Northpole Association L. L. Adjoining claims, last above described, One and Two Above Discovery, on Bear Creek, Goldfield Association, opposite 1 and 2 Above and 1 Below L. L. Bear Creek, Rich Association on Bear Creek, and adjoining 2 Above Central Association, adjoining No. 1 Below on Central [95] Creek, Discovery on Central Creek, One Above on Central Creek, One Below on Central Creek, Fraction (Garbin) on Central Creek, Discovery claim on Jack Creek, a tributary of Klery. All interest of said first party in all mining claims owned in whole or part in Rocky Creek, in said mining and recording district.

And the Court further finds that all of said mining claims were put into said mining copartnership as assets by said defendants, and thereupon the said Klery Creek Mining Company entered into posses-

sion of said claims and began to mine and operate the same as a mining copartnership; that thereafter the said Klery Creek Mining Company operated said mining claims on said Klery Creek and vicinity, in the Noatak-Kobuk Recording District, between the said 19th day of March, 1910, and the first day of September, 1911; that during said term and time said mining claims were operated at a loss to said mining copartnership of \$16,484.82, and that said indebtedness is due with legal interest to date, to Robinson-Magids & Company, or its assignee, for goods, wares and merchandise and for money advanced and paid out at the request of said Klery Creek Mining Company.

IV.

The Court finds that on or about the first day of September, 1911, the said Klery Creek Mining Company executed several written leases upon several of the said mining claims above mentioned belonging to the said Klery Creek Mining Company, for the purpose of having said mining claims mined during the winter of 1911, under all of which leases certain stipulated royalties were reserved to be paid to said mining copartnership.

V.

The Court finds that theretofore and on or about the first day of September, 1911, the defendants Andy Garbin and Jack Lesamis, in violation of the terms and conditions of the said copartnership agreement, conveyed, without consideration, to defendants George L. Stanley and Sam Sallo all their right, title and interest in the said Klery Creek Min-

ing Company copartnership property, real and personal, and the Court finds that said conveyances were void as against the plaintiff and the creditors of said Klery Creek Mining Company, and that said defendants, Stanley and Salo are the trustees for defendants Garbin and Lesamis. [96]

VI.

The Court finds that the said written instruments executed and delivered as above set forth were thereafter recorded in the office of the Noatak-Kobuk Recording District, on the 29th day of March, 1910, and the said defendants George L. Stanley and Sam Salo took and received the said transfers of title from the said defendants Andy Garbin and Jack Lesamis, with full knowledge and notice of the said copartnership and with full knowledge and notice of the fact that the said Klery Creek Mining Company had outstanding indebtedness at said time of the sum of \$16,484.82, incurred in mining operations theretofore conducted.

VII.

The Court finds that all of said royalties due or collected from the placer claims above described and set forth belonged to the Klery Creek Mining Company.

VIII.

The Court finds that heretofore and on the 24th day of October, 1911, one Philip Murphy, claiming an assignment of the account of Robinson-Magids & Company, creditors of said Klery Creek Mining Company, began an action at law in the above-entitled court, for the collection of \$17,124.00 and

interest, against the said Klery Creek Mining Company, and caused to be issued a writ of attachment against the mining property of said Klery Creek Mining Company; that the indebtedness of the said Klery Creek Mining Company to the said Philip Murphy, assignee of said Robinson-Magids & Company, should be paid from the first proceeds of the assets and property of said Klery Creek Mining Company, after the expense of this litigation is settled, and before any balance sum due the said defendants is paid, from the proceeds or assets of said mining copartnership.

IX.

The Court finds that owing to the acts and actions of the defendants it is impossible for the plaintiff and said defendants to further act and conduct the mining copartnership in the management and workings of said mining copartnership property and mining claims; that said defendants Stanley, Sallo, Garbin, Lesamis and Tyapay, are all insolvent and have no other property of value other than their interest in said copartnership property, and that the assets of the said Klery Creek Mining [97] Company consists of said mining claims above described, and certain personal property incident thereto and upon said mining claims, and that the said Klery Creek Mining Company has no money or other property except the said placer claims and personal property therewith connected to pay its indebtedness.

X.

The Court finds that the total gold production of 1910 of said Klery Creek Mining Company was \$16,-

251.42 and that the total expense of the said Klery Creek Mining Company for 1910 was \$8,959.75, leaving a net profit of \$7,391.67, of which the said defendant Jack Lesamis received \$1,726.00; John Tyapay, \$2,000.00, and Andy Garbin, \$1,512.12, and the said Lesamis had a credit for 1911 of \$737.89, and the said John Tyapay had a credit of \$463.89, and the said Andy Garbin had a credit of \$951.70.

That the total expense for the year 1911 was \$26,271.70 and the total gold production for the year 1911 amounted to \$9,786.88, leaving an indebtedness due the Robinson-Magids & Company or its assignee, Philip Murphy, of \$16,484.82 on the first day of September, 1911, with legal interest to date, amounting to \$2,830.12; that the Court further finds that the defendants in the years 1911 and 1912, in order to prevent a forfeiture did the annual assessment work on certain claims mentioned in paragraph V of the supplemental answer and cross-complaint of defendants Stanley and Sallo, of the total value of \$2,400.00 and that said amount is chargeable as indebtedness against the said Klery Creek Mining Company, and the defendants are entitled to be credited with the same.

XI.

The Court finds that the total indebtedness of said Klery Creek Mining Company, due to the said Robinson-Magids & Company, or its assignee, Philip Murphy, with legal interest to date, amounts to \$19,314.94, and that and each of the said partners would be indebted to the said Klery Creek Mining Company for the sum of \$4,828.73, less the credits

above mentioned, and that the said defendant Lesamis is indebted to said Klery Creek Mining Company in the sum of \$2,875.33; that the said defendant Tyapay is indebted to the Klery Creek Mining Company in the sum of \$3,149.33; that the said defendant Garbin is indebted to the said Klery Creek Mining Company in the sum of \$2,661.52; that the said plaintiff Greenberg [98] is indebted to the Klery Creek Mining Company in the sum of \$10,628.76.

XII.

The Court finds that it was the intent and meaning of the parties in forming said Copartnership that the balance payment of \$24,000 was to be paid from one-fourth of the gross output from the mining operations of the copartnership property, to which the said grantee, H. Greenberg, would be entitled, and that the defendants, Jack Lesamis, Andy Garbin and John Tyapay, have received on the said sum of \$24,000 the total sum of \$5,238.19, leaving a balance due to said defendants or their assigns from the one-fourth gross output, the sum of \$18,761.81.

XIII.

The Court finds that the allegations contained in the answers of *of* the defendants that said balance payment was due from *from* the first gold-dust extracted and taken from the undivided one-quarter (1-4) interest in said mining property, is supported by the evidence, and is true.

XIV.

The Court further finds that all allegations in the answers of the defendants and in their supplemental answer and cross-complaint inconsistent with the

above and foregoing findings, are not supported by the evidence in the case and are untrue.

CONCLUSIONS OF LAW.

And from the above and foregoing findings of fact, the Court now makes the following

CONCLUSIONS OF LAW:

I.

That the plaintiff, Greenberg, is entitled to an accounting and the mining claims and personal property situated thereon, mentioned in the complaint, are liable for the debts of the copartnership; that the copartnership, should be dissolved and the assets of the copartnership sold, and from the proceeds the costs and expenses of this litigation should be paid, then the indebtedness of the copartnership, after which the balance of the purchase price agreed to be paid by the plaintiff Greenberg should be paid, and the balance, if any, of said proceeds should be equally divided between the plaintiff Greenberg and the defendants Lesamis, Tyapay and Garbin, or their assigns.

II. [99]

That the plaintiff Greenberg is entitled to a final decree of this Court dissolving the said copartnership and directing the sale of the assets thereof, and the application of the proceeds of said assets to the payment of the indebtedness of said copartnership, and the distribution of the same, as above provided.

Done in open court this 10th day of June, 1916.

J. R. TUCKER,
District Judge.

Service of the foregoing amendment of findings of fact and conclusions of law admitted by receipt of copy this —— day of May, 1916.

Of Attorneys for Defendants.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Amended Findings of Facts and Conclusions of Law. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jun. 10, 1916, G. A. Adams, Clerk. By W. C. McG., Deputy. Orders and Judgments, Vol. 11, page 248. J. F. Hobbes and W. A. Gilmore, Attorneys for Plaintiff. [100]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY, and SAM
SALLO,

Amended Decree.

This cause came on regularly to be heard before the Court without a jury, on the 15th day of September, 1913, and the trial thereof continued from day to day until the 19th day of September, 1913, the

plaintiff appearing in person and by his attorneys, Messrs. J. F. Hobbes and William A. Gilmore, and the defendants appearing in person and by their attorney G. J. Lomen, Esq., and witnesses on behalf of the plaintiff and defendants having been sworn and testified, and documentary evidence and depositions on behalf of the parties hereto being read and introduced in evidence, and the Court having heard the arguments of counsel for the respective parties, and having taken the same under advisement, and having thereafter, on the 21st day of October, 1913, filed its written opinion herein, finding for the plaintiff and against the defendants, and having heretofore on the 28th day of October, 1913, made and filed its findings of fact and conclusions of law herein, and being now fully advised in the premises, and upon motion of attorneys for plaintiff, it is hereby.

ORDERED, ADJUDGED AND DECREED, that the plaintiff do have judgment as prayed for in his complaint herein, against the defendants and each of them; that the mining copartnership between plaintiff and defendants named the Klery Creek Mining Company consist of mining claims and persolved; that the plaintiff be, and he is hereby granted an accounting between the plaintiff and defendants of all and every matter and thing arising under and by virtue of the mining copartnership known as the Klery Creek Mining Company, in accordance with the findings of the Court, heretofore made, filed and entered; and it is further Ordered, Adjudged and Decreed, that all the assets of the said Klery Creek Mining Company, be, and the same is hereby dis-

sonal property situated thereon, and therewith connected, hereinafter named; that under and by [101] virtue of said accounting that said Klery Creek Mining Company is indebted to the Robinson-Magids & Company, or to Philip Murphy, its assignee in the sum of \$16,484.82, with legal interest from September 1st, 1911, to date, amounting to \$2,830.12, amounting in principal and interest in all, to the sum of \$19,314.94, and that of said indebtedness the defendant Jack Lesamis owes to the Klery Creek Mining Company the sum of \$2,875.33; that the said defendant John Tyapay is indebted to the said Klery Creek Mining Company in the sum of \$3,149.33; that the said defendant, Andy Garbin, is indebted to the said Klery Creek Mining Company in the sum of \$2,661.52; that the plaintiff H. Greenberg, is indebted to the said Klery Creek Mining Company in the sum of \$10,628.76; it is further ORDERED, ADJUDGED AND DECREED that the plaintiff, H. Greenberg, is entitled to have the assets of said copartnership sold and the proceeds applied to the payment of said indebtedness, said assets of said copartnership being the mining claims described in plaintiff's complaint, and in the findings of fact heretofore made and filed by the Court, together with the personal property thereon situated, said mining claims all situated and located in the Noatak-Kobuk Mining Precinct, District of Alaska, to wit:

Discovery Claim, One Above Discovery, Two Above Discovery, Six Below Discovery, Fraction between Two and Three Above Discovery, Association Fraction between Discovery and Starr, Cali-

fornia Association, L. L. Klery Creek, opposite Discovery, Butte Association, R. L. Klery Creek, opposite Discovery, Oregon Association (Bench and Creek) adjoining upper end Starr, and lower end of 1 and 2 Above Discovery, Bench Seven, opposite Creek Claim Seven Below, Gold Hill, Association, R. L., opposite 1, 2, 3 and 4 creek claims, all the foregoing claims being situate on Klery Creek, or its benches; also Honey Claims, one and two, between Klery and Bear Creeks, Northpole Association L. L., adjoining claims last above described, One and Two Above Discovery on Bear Creek, Goldfield Association opposite 1 and 2 above and one below L. L. Bear Creek, Rich Association on Bear Creek, adjoining 2 Above Central Association, adjoining No. 1 Below on Central Creek, Discovery on Central Creek, One Above on Central Creek, One Below on Central Creek, Fraction (Garbin) on Central Creek, Discovery Claim on Jack Creek, a tributary of Klery; all interest of said first party in all mining claims owned in whole or in part in [102] Rocky Creek in said mining and recording District.

It is FURTHER ORDERED, ADJUDGED AND DECREED, that the defendants George Stanley and Sam Sallo are trustees for the defendants Andy Garbin and Jack Lesamis, respectively, and that said defendants Stanley and Sallo, by the conveyances made to them, took and now hold the legal title to the property described in said conveyances in trust for said defendants Andy Garbin and Jack Lesamis, and subject to the said indebtedness of the said Klery Creek Mining Company.

It is FURTHER ORDERED, ADJUDGED AND DECREED, that the United States Marshal for the District of Alaska, Second Division, sell, the whole of said assets, both personal and real above described, under order and execution of the Court in this action in the manner provided by law, and pay the proceeds of said sale to the clerk of the above-entitled court and that said clerk pay and distribute the said proceeds so received by him in the following manner:

1. The plaintiff's costs and expenses in this litigation.

2. The said indebtedness of the Klery Creek Mining Company to Robinson-Magids & Company or Philip Murphy, as assignee.

3. The balance of said proceeds, if any, to the defendants or their assigns, to the amount of \$18,761.81.

4. The balance of said proceeds, if any still remaining, to be distributed equally between the plaintiff and the defendants, Andy Garbin, Jack Lesamis, John Tyapay, or their assigns.

It is FURTHER ORDERED, ADJUDGED AND DECREED, that the plaintiff do have judgment and execution against the defendants and each of them for his costs and disbursements in this action, taxed at the sum of \$141.95 dollars.

Done in open court this 10th day of June, 1916.

J. R. TUCKER,
District Judge.

Service of the foregoing amended decree admitted by receipt of copy this — day —, 1916.

Of Attorneys for Defendants. [103]

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Amended Decree. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jun. 10, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. Orders and Judgments, Vol. 11, page 252. J. F. Hobbes and W. A. Gilmore, Attorneys for Plaintiff. Jdmt. Docket #3, page, #12. [104]

*In the District Court for the District of Alaska,
Second Division.*

TERM MINUTES, General 1916 Term Beginning
January 29, 1916.

Saturday, June 10, 1916, at 11 A. M.

Court convened pursuant to adjournment,—
Honorable J. R. TUCKER, District Judge, Presiding.

Upon the convening of court the following proceedings were had:

No. 2349.

H. GREENBERG.

vs.

JACK LESAMIS et al.

Minute Order of June 10, 1916.

Court announced allowance of amended findings of fact and conclusions of law as presented by plaintiff.

Findings of fact signed and filed.

Amended decree signed and filed.

G. J. Lomen, counsel for defendants, and on behalf of defendants, took exceptions to allowance of both the findings of fact and conclusions of law and the decree.

Exceptions allowed.

On motion leave was granted to G. J. Lomen to withdraw the amended findings of fact and conclusions of law and decree submitted by him on behalf of defendants with leave to modify or amend same at discretion and refile.

Order made overruling the motion of the defendants to set aside the sale.

Exception taken by G. J. Lomen on behalf of the defendants, such exception being allowed.

Whereupon court adjourned until 11 A. M. Saturday, June 17, 1916. [105]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

**Notice of Hearing Motion for Amended Findings
and Decree.**

To J. F. Hobbes and William A. Gilmore, Attorneys
for Plaintiff:

TAKE NOTICE that on Saturday, the 17th day
of June, 1916, at 11 o'clock A. M., or as soon there-
after as counsel can be heard, at the courthouse in
Nome, Alaska, the defendants will move the court
for amended findings and an amended decree herein,
and for a reference to some suitable person to take
an accounting herein as shown by the motion and
affidavit hereto attached.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendants Lesamis, Tyapay and
Garbin. [106]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY ANDY GAR-
BIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Motion for Amended Findings and Decree.

Now come the defendants above named and move the Court upon the affidavit of G. J. Lomen hereto annexed and the records and files in said action, that the amended findings and amended decree herein be so amended as to conform to the opinion and mandate of the Circuit Court of Appeals herein as the same shall be judicially interpreted and according to their true intent, meaning and spirit, correcting patent errors therein appearing upon the face of the record. That whether such amended findings or amended decree be corrected or not, the Court make an order for reference in said cause to some suitable person to examine the accounts of the said copartnership heretofore existing between plaintiff and defendants and the cross-claims of said plaintiff and defendants not inconsistent with the findings and decree herein or inconsistent with the opinion and mandate of said Circuit Court of appeals and report to the Court the

present state of the business of said copartnership in a summarized form, with the value of its assets and liabilities and the accounts of each of said copartners with the said firm and with each other.

Said motion is based upon the grounds stated in said adavit and the records aforesaid and in order that justice may be done and a full settlement had between said parties.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendants Lesamis, Tyapay and Garbin. [107]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY ANDY GAR-
BIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Affidavit of G. J. Lomen.

United States of America,
Territory of Alaska,
Second Division,—ss.

G. J. Lomen, being duly sworn, on oath deposes and says:

1st. That he is one of the attorneys for the defendants in the above-entitled action; that said action

was brought to dissolve the copartnership heretofore existing between said parties and for an accounting; that issue was joined therein on the complaint of the plaintiff, the separate answer of the defendants Lesamis, Tyapay and Garbin, the separate answer of defendants Stanley and Sallo, and the supplemental answer and cross-complaint of the defendants Stanley and Sallo.

2d. That among the issues raised in and by said pleadings were the following:

(a) The construction of the contract of sale, plaintiff contending that the balance of the purchase price was to be paid by the partnership from the net profits of the mining operations conducted by the partnership, and the defendants contending that the same was to be paid by plaintiff from the gross output of the undivided one-quarter of the claims purchased by him.

(b) Whether or not the mining claims were partnership property, and, impliedly, to what extent, if any, they were partnership property.

(c) Whether the mining in 1911 was conducted by plaintiff individually or by the partnership.
[108]

(d) Whether the indebtedness to Robinson-Magids Co. was a partnership debt or the individual debt of plaintiff, and the amount of such indebtedness, if any.

(e) The several cross-claims of plaintiff and defendants growing out of said contract of sale and out of the partnership transactions, as well as the cross-claims of the defendants Stanley and Sallo, for and

on account of assessment work.

(f) The amount of the indebtedness of the partners to the partnership.

(g) The amount of the indebtedness of said partners each to the other.

(h) The amount of the indebtedness of said partnership to strangers.

(i) The amount of the indebtedness of the partnership to the partners or their assigns.

(j) The amount due from plaintiff to the several defendants on individual account and especially the purchase money due from plaintiff to the defendant.

(k) The liability of plaintiff for \$1,629.94 damages for conversion of gold-dust belonging to the defendants and appropriated by plaintiff.

(l) The claims of defendants for interest on balance of accounts due them.

3d. It was admitted by the findings that one M. F. Moran was indebted to the partnership in the sum of \$720.00.

It was admitted in the reply of plaintiff that he was a copartner in the firm of Robinson-Magids & Co., and that Philip Murphy, the assignee of Robinson-Magids & Co. was an employee and agent of said company; that it was not denied by plaintiff that the assignment of said claim was without consideration and it was expressly admitted in the reply of plaintiff that said [109] assignment was made for the purpose of collection and that the accounts assigned to Murphy were justly and legally due to Robinson-Magids & Co.

It was also admitted by plaintiff on the trial (folio

189), as follows: "Robinson-Magids & Company have no interest in the Klery Creek Mining Company and never had. I am liable to my partners personally for the indebtedness of the Klery Creek Mining Company; it is all charged up to me personally." (Testimony of plaintiff, folio 189.)

It was also admitted by plaintiff (folio 128) that Frank Lesamis is another creditor of the Klery Creek Mining Company to the extent of \$1,158.53, which amount was money borrowed from Frank Lesamis in 1911. (Testimony of plaintiff, folio 128.)

It was expressly found by the findings of the trial court that \$2,400.00 was due to the defendants and chargeable as indebtedness against the Klery Creek Mining Company, but that said finding was not carried forward to, or incorporated in, or noticed by the amended decree herein.

That the right to an accounting was not contested in said action, that both plaintiff and the defendants were actors in said action and asked for an accounting.

4th. That such proceedings were had in said action that findings of fact and conclusions of law were, on the 28th day of October, 1913, entered by said court dissolving the partnership known as the Klery Creek Mining Company and ordering and directing a sale of the partnership assets and the payment of the proceeds of sale to the clerk of said court for distribution; that the court in its findings found certain facts to serve as a basis for an accounting and made a partial accounting in said case and entered a decree based upon said findings, which decree was in part

interlocutory and in part final.

5th. That such proceedings were thereafter had that on the 10th day of August, 1914, the assets of said partnership mentioned [110] in the decree were sold by the United States Marshal; that the amount bid at such sale was \$3,000.00; that plaintiff was the highest and best bidder in said amount, but that the amount of said bid was never paid except the sum of \$107.07 thereof, being the costs of sale and that no part of said money so bid was ever delivered to the clerk of said court as provided by said decree; that the defendants objected to the confirmation of said sale on the ground that said bid was not paid, but that said sale was nevertheless confirmed.

6th. That such proceedings were thereafter had that defendants took an appeal from said decree and from the order confirming said sale to the Circuit Court of Appeals for the Ninth Circuit, but filed no supersedeas bond; that such proceedings were had in said appellate court that said decree of the trial court was reversed and modified in part and confirmed in part; that the opinion of said Circuit Court of Appeals is reported in 225 Federal Reporter, page 449, reference to which opinion is hereby made; that the mandate of said Circuit Court of Appeals dated September 10th, 1915, was duly filed in the office of the Clerk of said District Court on the 5th day of February, 1916; that in and by said opinion and mandate the said District Court was ordered and directed to modify and change its finding number eleven and to modify and amend its judgment or decree herein to conform to said opinion and mandate and that such

execution and further proceedings be had in said cause in accordance with said opinion and mandate as according to right and justice and the laws of the United States ought to be had.

7th. That the defendants thereupon petitioned the said District Court to amend its findings and decree in accordance with said opinion and mandate and specifically pointed out to said District Court certain clerical errors in matters of computation made in the findings of said District Court theretofore filed and which [111] errors and mistakes appear on the face of the record, but which neither these defendants nor their attorneys nor as affiant believes, the Circuit Court of Appeals observed or noticed; that said errors and mistakes were not called to the attention of affiant or his associates until long after the filing of said mandate; that affiant also called said Court's attention to certain errors in the matter of computation as he believes on the part of said Circuit Court of Appeals in the matter of adopting said erroneous findings of the trial court and in the matter of adjusting and apportioning another and different sum than by said Circuit Court of Appeals was declared to be the amount to be adjusted and apportioned and also as affiant believes was inconsistent with the law of the case as established by said Circuit Court of Appeals when it declared that the balance due for purchase money to be paid by plaintiff to the defendants was to be paid by him and not by the firm from the one-fourth gross of the output of the mining claims mentioned; that affiant also moved the court upon affidavit showing that the bid

made by plaintiff at the sale above mentioned, had not even now been paid, for an order setting aside said sale and the order confirming same.

8th. That thereupon and on the 10th day of June, 1916, the said District Court made and filed its amended findings of fact and conclusions of law herein and made and entered its decree upon said findings and denied the defendants' motion to set aside said sale and order confirming same to all of which defendants duly excepted.

9th. That the said amended findings and conclusions of law and said amended decree embraced the errors above specified as contained in said original findings and decree and in said opinion of the Circuit Court of Appeals; that neither of said findings or decrees covered or embraced all of the issues above mentioned and particularly did not cover, embrace or settle the said issues [112] mentioned in paragraph two, literae e, f, g, h, i, j, k and l above; and said findings did not cover or embrace the facts admitted by the pleadings and the evidence and mentioned in paragraph three hereof; that said amended decree herein was in substance and effect an interlocutory decree, calling for and contemplating an accounting and in terms granted "An accounting between plaintiff and defendants of all and every matter and thing arising under and by virtue of the mining copartnership known as the Klery Creek Mining Co. in accordance with said findings of the court heretofore made, filed and entered"; that the findings made and filed by said court did not, nor did any or either of them, make or complete any accounting be-

tween said parties except as to certain matters and things mentioned and which constituted but a partial accounting to wit, the liability of the parties to said Klery Creek Mining Company in the matter of its liability to Robinson-Magids & Co., and not otherwise; that said decree did not order or direct any reference or appoint any referee to take said accounting or to complete the same; that said amended decree so made and entered by said District Court was amended in other particulars than the matters and things set forth in finding number eleven mentioned in the opinion and mandate of the Circuit Court of Appeals, and although the assets of said partnership had been hold as above stated, said amended decree again decreed a sale of said assets and the distribution of the proceeds of such sale; that said amended decree does not purport to have been made or entered in obedience to any opinion or mandate of the Circuit Court of Appeals nor is said amended decree limited in its terms and provisions to the orders and directions of said opinion and mandate and said amended decree fails to provide for the distribution of the assets after sale, as ordered and directed in and by said opinion and mandate and fails to correct the errors and mistakes in the matters of computation of said courts above mentioned. [113]

That said decree imposes upon the Clerk of said court discretionary and judicial power with reference to the beneficiaries of the fund to be distributed, said beneficiaries being named in the disjunctive and one of said beneficiaries, if a partnership being named only by its firm name without showing who

the members of said partnership are.

That said amended decree makes no provision for the collection of the amounts found due from plaintiff and defendants or any or either of them.

The said amended findings and said amended decree adjusts and apportions a part of the one-quarter gross found to be due from plaintiff to defendants on account of purchase money, although it appears elsewhere in said decree that more than \$5,000 thereof had already been paid to defendants, and finds the amount due from plaintiff to the Klery Creek Mining Co. without reference to moneys withdrawn from the firm by him and without reference to his liability to said Klery Creek Mining Co. for and on account of the expenses incurred by said Klery Creek Mining Co. and the plaintiff's failure to contribute to said expenses.

It is not shown by said amended findings or decree who the creditors, Robinson-Magids & Co. are, whether a corporation or a partnership, and if the latter who constitute said partnership, and said decree in effect is a money judgment in favor of said Robinson-Magids & Co., although said Robinson-Magids & Co. are not made parties to said action, and said decree in effect orders execution of such money judgment although it appears in the findings that an action at law is now pending between said Robinson-Magids & Co., and the Klery Creek Mining Co. involving their said claim, and that in said law action a writ of attachment is issued out of said court against the partnership assets of the Klery Creek Mining Co., and that the sale of

said assets ordered in and by said amended decree was not decreed to be subject to said attachment nor was said attachment discharged; that said amended decree [114] is not justified by the findings and is contrary to law; that said amended decree is not justified by the opinion and mandate of the Circuit Court of Appeals for the Ninth Circuit filed herein and is contrary to law.

That the examination of a long intricate and complicated account, to wit, the accounts and business transactions of said copartnership and the individual dealings had between said partners in contemplation of said copartnership is necessary to a complete determination of the rights of the parties hereto.

That affiant makes this affidavit for the purpose of correcting the errors above mentioned and appearing on the face of the said findings and decree, and for the purpose of securing the order of said court appointing a referee to take an accounting between said parties as contemplated by said decree and the entry of a final decree upon the coming in and approval of the accounting so made, and for such other and further relief as to the Court may seem just in the premises.

G. J. LOMEN.

Subscribed and sworn to before me this 14th day of June, 1916.

[Seal]

D. B. CHACE,
Notary Public for the Territory of Alaska, Residing
at Nome.

(My commission expires May 12th, 1917.) [115]

*In the Circuit Court for the District of Alaska,
Second Division.*

TERM MINUTES, General 1916 Term Beginning
January 29, 1916.

Saturday, June 17, 1916, at 11 A. M.

Court convened pursuant to adjournment,—
Honorable J. R. TUCKER, District Judge, pre-
siding.

Upon the convening of Court the following pro-
ceedings were had:

Minute Order of June 17, 1916.

2349.

H. GREENBERG

vs.

JACK LESAMIS et al.

Defendant's motion for order of reference, etc.,
taken up for hearing.

On request of G. J. Lomen he was permitted to
amend his affidavit in support of motion by striking
out the word findings and inserting instead the word
reply in the first line in subdivision 3d on page 2
of the affidavit.

Oral argument presented by G. J. Lomen on behalf
of motion from 11 A. M. to 12:10 P. M.

Court adjourned until 2 P. M.

2 P. M.

Hearing continued.

Argument of G. J. Lomen continued from 2 P. M.

to 2:50 P. M., followed by argument of J. F. Hobbes, on behalf of plaintiff, until 3 P. M.

Closing argument submitted by G. J. Lomen.

Matter submitted and motion overruled.

G. J. Lomen on behalf of defendants taking and being allowed an exception.

Whereupon court adjourned until 11 A. M. Saturday, June 24, 1916. [116]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY ANDY GARBIN,
GEORGE STANLEY and SAM
SALO,

Defendants.

Assignment of Errors.

Come now the defendants above named and assign the following errors upon which they will rely in prosecuting their appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final judgment of said District Court made and entered, after mandate, on the 10th day of June, 1916, but dated as of the 28th day of October, 1913, and denominated an "Amended Decree" without referring to any mandate; and from the order of said Court dated June 10th, 1916, overruling the motion

of said defendants for amended findings and decree based upon the mandate and opinion of the Circuit Court of Appeals with necessary correction in the matter of errors of computation; and from an order overruling defendants' motion after entry of said amended findings and amended decree to reamend the findings and decree so as to conform to the mandate and opinion of the Circuit Court of Appeals, and to correct the manifest errors in matters of computation, and to take an account, dated June 17th, 1916; and from the whole of said amended judgment and decree and from the whole of said orders; also from the order of said Court dated June 17th, 1916, permitting the sale on execution to stand, and a satisfaction of the judgment, *pro tanto*, without payment of the bid made on [117] said sale, and without a deposit of same with the clerk of said court as directed by the judgment and decree, and from the whole of said order.

I.

The Court erred in entering its amended decree herein and said decree is alleged to be erroneous in this:

1. It does not appear on its face to be entered under or by virtue of or in compliance with the mandate of the appellate court.

2. It is dated as of the date of the original decree and necessarily refers to and is based upon the findings upon which said original decree was entered, and does not refer to any amended findings after mandate, although the decree is denominated "Amended

Decree," and although said decree is modified in part in accordance with said mandate.

3. Said original findings, so referred to, were erroneous and so found to be by the appellate court and could not serve as the basis for the amended decree, nor do the said original or amended findings justify said amended decree, nor is said amended decree justified by the opinion, mandate, or amended findings filed herein.

4. The original and also the amended findings and amended decree embrace errors in computation which were not known or discovered until after the coming in of the mandate, but are patent on the face of the original findings and decree, and were carried into the opinion of the appellate court and into the amended findings and amended decree after mandate. Said error in computation consisted of errors in subtraction of each of the certain credits allowed to defendants Lesamis, Tyapay and Garbin from [118] the sum of \$4,828.73, being one-fourth of the debts of the partnership, the amounts of said credits being respectively \$737.89, \$463.89 and \$951.70; and, in deducting which credits, the Court made mistakes in the aggregate, amounting to \$1,015.02 in favor of the plaintiff. The trial court also erred in assuming that the amount due from each of the partners was one-fourth of the indebtedness due to the creditor, Robinson-Magids & Company, when it clearly appeared that their relations to the partnership were unequal in the matter of moneys expended and moneys withdrawn, and said debts only bore a partial

relation to, and did not depend upon, the amount due Robinson-Magis & Co.

5. The amended findings and decree were not amended according to the opinion and mandate, but recede from same, in that a distribution of proceeds of partnership property is directed to be made in payment of plaintiff's individual debt to defendants, on account of purchase money due, a thing that the opinion said should not be done; and said amended findings and decree failed to order or direct execution or payment by plaintiff of such individual debt, and failed to order or direct execution or payment of the debts found due from the partners to the firm, and on the other hand drew into the assets of the firm the individual liability of plaintiff to his partners without drawing into said assets his liability to the firm for money withdrawn by him from the net, or money due from him for failure to contribute to the expenses of the partnership,—the expenses, so far as made, coming from the gross output in which plaintiff could not share, and from moneys advanced by defendants.

6. The amended findings and decree are inconsistent and incomplete in that they fail to find or adjudge upon several material issues raised by the pleadings: e. g. (a) The debt of \$2,400 due to Stanley and Salo expressly mentioned in the findings was [119] not adjudicated. (b) The claims due the partnership are not included in the assets directed to be sold, such claims including royalties mentioned in the decree, the claim against M. F. Moran of \$720.00 mentioned in plaintiff's reply, and the debts due from

the individual partners to their firm. (c) The accounting was partial only, and contemplated a further accounting; and if not, the decree would be erroneous in that it did not treat all the parties to the action as "actors" and adjudicate on their respective rights. (d) The decree did not adjudicate in regard to the \$1,158.53 admitted by plaintiff to be due to Frank Lesamis for money borrowed and which was included in the "output" of 1911. (e) The decree contained no ordering or mandatory part nor did it provide for execution or payment of moneys found due except with reference to partnership property. (f) The decree found that "The plaintiff be and he is hereby granted an accounting between the plaintiff and defendants of all and every matter and thing arising under and by virtue of the mining copartnership known as the Klery Creek Mining Company in accordance with the findings of the court heretofore made, filed and entered," and does not specify, except by reference, the results of such special and partial accounting, nor does such reference to an accounting include other matters of account necessarily embraced within the material issues of the pleadings.

II.

The Court erred in decreeing "That the plaintiff do have judgment as prayed for in his complaint herein," the same not being based upon or justified by the findings of the court and inconsistent with the findings and conclusions of law.

III.

The Court erred in not taking an account of all

matters [120] between said parties and embraced within the issues of the pleadings and in refusing to appoint a referee to take such accounting, an accounting being contemplated by the terms of the decree.

IV.

The Court erred in finding as a fact that plaintiff had fulfilled and carried out the terms, covenants and conditions on his part to be made, done, kept and performed, it appearing from the mandate that such was not the case.

V.

The Court erred in not including among the assets of the partnership the debt due from M. F. Moran of \$720.00 and by the reply admitted to be due, nor the royalties mentioned in the findings, nor the debts due from the partners.

VI.

The Court erred in not including in the amount due from plaintiff the moneys withdrawn by him from the partnership and applied on his own individual account to defendants, to wit: \$5,238.19, and in not charging said plaintiff with any of the expenses of said mining copartnership.

VII.

The Court erred in deducting from plaintiff's one-quarter of the gross output, one-fourth of the net profits for the year 1910, it appearing that he had not paid for his share of the capital stock of the partnership. (Difference between \$6,509.57 ($\frac{1}{4}$ gross output) and the $\frac{1}{4}$ net, \$1,847.92=\$4,661.66, the amount "adjusted.")

VIII.

The Court erred in failing to adjudicate in regard to the several cross-claims of the plaintiff and defendants whether [121] on partnership or individual account, and, to the extent that such claims were adjudicated, the Court failed to decree collection or payment of the respective amounts found due one from the other.

IX.

The Court erred in embracing within the accounting by it made, the transaction of 1910, said account being closed and the net profits disposed of, in so far as subsequent creditors were concerned.

X.

The Court erred in not taking note of the fact that plaintiff was a partner of the firm of Robinson-Magids & Company and in not adjudicating with reference thereto when it was found by the Court that plaintiff was a debtor to the partnership and he himself a member of the creditor company so that, to the extent of his payment of the partnership debt, he would pay *pro tanto* to himself.

XI.

The Court erred in awarding costs against the defendants personally, the Court having adjudged that the same be paid from the proceeds of the sale of the partnership property.

XII.

The Court erred in overruling defendants' motion on petition for amended findings and amended decree after mandate as prayed for in the petition.

XIII.

The Court erred in overruling the defendants' motion to amend the amended findings and amended decree after mandate to [122] appoint a receiver and to take an account.

XIV.

The Court erred in overruling the defendants' motion to vacate the sale on execution and in granting plaintiff's motion to allow the sale on execution to stand, without compliance with the decree and without payment of the amount bid, plaintiff being the bidder, and Robinson-Magids & Co. the "judgment" (?) creditor.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendants.

[Endorsed]: #2349. In the District Court for the District of Alaska, 2d Division. H. Greenberg, Plaintiff, vs. Jack Lesamis, John Tyapay, Andy Garbin, George Stanley and Sam Salo, Defendants. Assignment of Errors. Filed in the Office of the Clerk of of the District Court of Alaska, Second Division, at Nome. Jun. 5, 1917. G. A. Adams, Clerk. By W. C. McG., Deputy. O. D. Cochran and G. J. Lomen, Attorneys for Defendants. [123]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALO,

Defendants.

Petition for Order Allowing Appeal.

Come now the defendants above named and feeling themselves aggrieved by the final judgment and decree made and entered in the above-entitled cause on the 10th day of June, 1916, but dated as of the 28th day of October, 1913, and denominated an "Amended Decree" in favor of the plaintiff and against the defendants, for a dissolution of partnership and an accounting, do hereby appeal from said final judgment and decree and from the whole and every part thereof, and do also appeal from the order of said court dated June 10th, 1916, overruling the motion of said defendants for amended findings and decree based upon the mandate and opinion of the Circuit Court of Appeals for the Ninth Circuit, with necessary corrections on account of errors of computation and from the order of said court dated June 17th, 1916, overruling the defendants' motion after entry of said amended decree to reamend the

findings and decree so as to conform to the mandate and opinion of the Circuit Court of Appeals and to correct the manifest errors in matters of computation and to take an account; also from the order of said court dated June 17th, 1916, permitting the sale on execution to stand and a satisfaction of the judgment *pro tanto* without payment of the bid made on said sale under said execution, and from the whole of said orders, to the United States Circuit [124] Court of Appeals for the Ninth Circuit and they pray that these their appeals may be allowed and that a transcript of the record and proceedings upon which said judgment and orders were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that said Court approve the bond on appeal herein in the sum of Two Hundred and Fifty (\$250) Dollars.

Dated at Nome, Alaska, this 5th day of June, 1917.

O. D. COCHRAN and
G. J. LOMEN,

Attorneys for Defendants.

Service of the foregoing, admitted this 5th day of June, 1917.

J. F. HOBBS,
Of Attorneys for Plaintiff.

[Endorsed]: #2349. In the District Court for the District of Alaska, 2d Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Petition for Order Allowing Appeal. Filed in the Office of the Clerk of the District Court of Alaska, Second

Division, at Nome. Jun. 5, 1917. G. A. Adams, Clerk. By W. C. McG., Deputy. O. D. Cochran and G. J. Lomen, Attorneys for Defendants. [125]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALO,

Defendants.

Order Allowing Appeal.

Upon motion of O. D. Cochran and G. J. Lomen, attorneys for defendants above named, it is

ORDERED, that the appeals to the United States Circuit Court of Appeals for the Ninth Circuit, (1) from the final judgment and decree made and entered in the above-entitled cause on the 10th day of June, 1916, but dated as of the 28th day of October, 1913, and denominated an "Amended Decree" in favor of the plaintiff and against the defendants for a dissolution of partnership and an accounting; (2) from the order of said court dated June 10th, 1916, overruling the motion on petition of said defendants for amended findings and decree based upon the mandate and opinion of the Circuit Court of Appeals with necessary corrections on account of errors of

computation; (3) from the order dated June 17th, 1916, overruling defendants' motion on affidavit after entry of said amended decree to reamend the findings and decree so as to conform to the mandate and opinion of the Circuit Court of Appeals and to correct manifest errors in matters of computation and to take an account; (4) from the order dated June 17th, 1916, permitting the sale on execution to stand and a satisfaction of the judgment *pro tanto* without payment of the bid made on said sale under said execution, and from [126] the whole of said orders, are hereby allowed.

IT IS FURTHER ORDERED that the motions, petition and affidavits above referred to and the proceedings had thereon, including minute orders and exceptions noted, are hereby made a part of the record herein, including the mandate, and that a transcript of said record, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, as the record herein.

Done in open court this 5th day of June, 1917.

J. R. TUCKER,
District Judge.

[Endorsed]: #2349. In the District Court for the District of Alaska, 2d Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Order Allowing Appeals. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jun. 5, 1917. G. A. Adams, Clerk. By W. C. McG., Deputy. O. D. Cochran and G. J. Lomen, Attorneys for Defendants. Orders and Judgments. Vol. 11, page 373. C. [127]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALO,

Defendants.

Undertaking on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we, Jack Lesamis, John Tyapay, Andy Garbin, George Stanley and Sam Salo, as principals, and A. N. Kittilsen and Alfred J. Lomen, as sureties, are held and firmly bound unto the plaintiff in the sum of Two Hundred and Fifty (\$250) Dollars, to be paid to the said plaintiff, his heirs or assigns, for the payment of which well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 5th day of June, 1917.

The condition of the above undertaking and obligation is such that, WHEREAS, the above-named defendants have filed their petition for appeals from the final judgment and decree made and entered in the above-entitled cause on the 10th day of June,

1916, but dated as of the 28th day of October, 1913, and denominated an "Amended Decree" in favor of the plaintiff and against the defendants for a dissolution of partnership and an accounting; from the order of said [128] court dated June 10th, 1916, overruling the motion of said defendants for amended findings and decree based upon the mandate and opinion of the Circuit Court of Appeals with necessary corrections on account of errors of computation and from the order of said court dated June 17th, 1916, overruling the defendants' motion after entry of said amended decree to reamend the findings and decree so as to conform to the mandate and opinion of the Circuit Court of Appeals and to correct manifest errors in matters of computation and to take an account; also from the order of said court dated June 17th, 1916, permitting the sale on execution to stand and a satisfaction of the judgment *pro tanto* without payment of the bid made on said sale under said execution and from the whole of said orders and have taken an appeal from said judgment and orders to the United States Circuit Court of Appeals and from the whole of said judgment and orders, to reverse the same;

NOW, THEREFORE, if the above-named defendants Jack Lesamis, John Tyapay, Andy Garbin, George Stanley and Sam Salo, shall prosecute their said appeals to effect, and answer all costs if they fail to make good their said appeals, then this obli-

gation shall be void; otherwise to remain in full force and effect.

JACK LESAMIS,
JOHN TYAPAY,
ANDY GARBIN,
GEORGE STANLEY,
SAM SALO,

Principals.

By G. J. LOMEN,

Their Attorney.

A. N. KITTILSEN,
ALFRED J. LOMEN,

Sureties. [129]

United States of America,
Territory of Alaska,
Second Division,—ss.

A. N. Kittilsen and Alfred J. Lomen, being duly sworn, each for himself and not one for the other, deposes and says:

That he is a resident of Nome in the Territory of Alaska, and one of the sureties mentioned above; that he is not a counselor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court or other officer of any court; that he is worth the sum of Two Hundred and Fifty (\$250) Dollars over and above all just debts and liabilities and exclusive of property exempt from execution.

ALFRED J. LOMEN.

A. N. KITTILSEN.

Subscribed and sworn to before me this 5th day of June, 1917.

[Seal]

O. D. COCHRAN,
Notary Public for the Territory of Alaska, Residing
at Nome, Alaska.

(My commission expires Aug. 4, 1919.)

The above and foregoing bond is hereby approved
this 5th day of June, 1917.

J. R. TUCKER,
District Judge.

[Endorsed]: #2349. In the District Court for the District of Alaska, 2d Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Undertaking on Appeal. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jun. 5, 1917. G. A. Adams, Clerk. By W. C. McG., Deputy. O. D. Cochran and G. J. Lomen, Attorneys for Defendants. [130]

*In the District Court, for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS et al.,

Defendants.

Clerk's Certificate to Transcript of Record.

I, G. A. Adams, Clerk of the District Court of Alaska, Second Division, do hereby certify that the

foregoing typewritten pages, from 1 to 130, both inclusive, are a true and exact transcript of the Complaint in Equity, Summons, Separate Answer of George Stanley and Sam Sallo, Separate Answer of Jack Lesamis, John Tyapay and Andy Garbin, Reply to Separate Answer of Jack Lesamis, John Tyapay and Andy Garbin, Reply to Separate Answer of George Stanley and Sam Sallo, Supplemental Answer and Cross-complaint, Reply and Answer to Supplemental Answer and Cross-complaint of George Stanley and Sam Sallo, Opinion, Dated October 21st, 1913, Findings of Fact and Conclusions of Law, Decree, Mandate, Notice, Motion and Petition filed May 20, 1916, Minute Order, May 27th, 1916, Amended Findings of Fact and Conclusions of Law, Amended Decree, Minute Order June 10th, 1916, Notice, Motion and Petition filed June 14th, 1916, Minute Order June 17th, 1916, Assignment of Errors, Petition for Order Allowing Appeal, Order Allowing Appeal, Undertaking on Appeal, in the case of H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendant, No. 2349, this Court, and of the whole thereof, as appears from the records and files in my office at Nome, Alaska; and further certify that the original Citation, Order Enlarging Time to file Record, dated June 5th, 1917, and Order Enlarging Time to File Record dated July 14th, 1917, in the above-entitled cause are attached to this transcript.

Cost of transcript \$50.60, paid by G. J. Lomen, of attorneys for defendant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 2d day of August, A. D. 1917.

[Seal]

G. A. ADAMS,
Clerk. [131]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN,
GEORGE STANLEY and SAM
SALO,

Defendants.

Citation.

United States of America,
Territory of Alaska,
Second Division,—ss.

The President of the United States of America, to
H. Greenberg, the Above-named Plaintiff,
GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, in the State of California, within thirty (30) days from the date of this citation, to wit, on the 5th day of July, 1917, pursuant to an order allowing the appeals herein entered in the office of the Clerk of

the United States District Court for the District of Alaska, Second Division, from the final judgment and decree made and entered in the above-entitled cause on the 10th day of June, 1916, but dated as of the 28th day of October, 1913, and denominated an "Amended Decree," in favor of the plaintiff and against the defendants, for a dissolution of partnership and an accounting; from the order dated June 10th, 1916, overruling the motion of said defendants for amended findings and decree based [132] upon the mandate and opinion of the Circuit Court of Appeals with necessary corrections on account of errors of computation; from the order dated June 17th, 1916, overruling the defendants' motion after entry of said amended decree to reamend the findings and decree so as to conform to the mandate and opinion of the Circuit Court of Appeals and to correct manifest errors in matters of computation and to take an account; also from the order dated June 17th, 1916, permitting the sale on execution to stand and a satisfaction of the judgment *pro tanto* without payment of the bid made on said sale under said execution, and from the whole of said orders; in that certain action wherein you, the said H. Greenberg, are plaintiff, and Jack Lesamis, John Tyapay, Andy Garbin, George Stanley and Sam Salo are defendants, to show cause, if any there be, why the said final judgment and orders rendered against said defendants should not each and all be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 5th day of June, 1917, and of the Independence of the United States, the one hundred and forty-first.

J. R. TUCKER,
District Judge.

Attest my hand and the seal of the United States District Court for the District of Alaska, Second Division, at the Clerk's office at Nome, Alaska, this 5th day of June, 1917.

[Seal] J. A. ADAMS,
Clerk of the District Court for the District of Alaska,
2d Division.

Service of the foregoing Citation is hereby admitted this 5th day of June, 1917.

By J. F. HOBBS,
Attorney for Plaintiff. [133]

[Endorsed]: #2349. In the District Court for the District of Alaska, 2d Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Citation. [134]

*In the District Court, for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN,
GEORGE STANLEY and SAM SALO,

Defendants.

**Order Enlarging Time to August 4, 1917, to File
Record.**

On motion of O. D. Cochran and G. J. Lomen, attorneys for defendants, and good cause appearing to the Court therefor, it is now hereby

ORDERED that the time for filing and docketing the transcript and record on the appeals in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, is hereby extended to the 4th day of August, 1917.

Done in open court this 5th day of June, 1917.

J. R. TUCKER,

District Judge, [135]

[Endorsed]: #2349. In the District Court for the District of Alaska, 2d Division. H. Greenberg, Plaintiff, vs. Jack Lesamis, et al., Defendants. Order Enlarging Time to File Record. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jun. 5, 1917. G. A. Adams, Clerk. By W. C. McG. Deputy. Orders & Judgments, Vol. 11, page 374c. [136]

*In the District Court, for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS et al.,

Defendants.

**Order Enlarging Time to September 1, 1917, to File
Record.**

On motion of O. D. Cochran and G. J. Lomen, attorneys for defendants, and good cause appearing to the Court therefor, it is now hereby

ORDERED that the time for filing and docketing the transcript and record on the appeals in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California is hereby extended to the first day of September, 1917.

Done in open court this 14th day of July, 1917.

J. R. TUCKER,

District Judge. [137]

[Endorsed]: #2349. In the District Court for the District of Alaska, 2d Division. H. Greenberg, Plaintiff, vs. Jack Lesamis, et al., Defendants. Order Enlarging Time to File Record. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 20 1917. G. A. Adams, Clerk. By W. C. McG. Deputy. Orders & Judgments, Vol. 11, page 378. [138]

[Endorsed]: No. 3034. United States Circuit Court of Appeals for the Ninth Circuit. Jack Lesamis, John Tyapay, Andy Garbin, George Stanley and Sam Salo, Appellants, vs. H. Greenberg, Appellee. Transcript of Record. Upon Appeal

from the United States District Court for the District of Alaska, Second Division.

Filed August 22, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

